

Exhibit 04

**to the Declaration of Johanna Schmitt, Esq.
in Support of Plaintiffs' Opposition to
Defendant's Motion for Summary Judgment**

In The Matter Of:

TETRIS HOLDING, LLC

v.

XIO INTERACTIVE INC.

MICHAEL CARTER - Vol. 1

December 13, 2010

MERRILL CORPORATION

LegalLink, Inc.

135 Main Street
4th Floor
San Francisco, CA 94105
Phone: 415.357.4300
Fax: 415.357.4301

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03:37:33 1 possible, and I don't tend to delete e-mails. And when
 03:37:39 2 I work on source code, I try to keep as many copies of
 03:37:43 3 that source code along the way through version control.
 03:37:47 4 So this has always been my procedure before the lawsuit.
 03:37:50 5 At the time of the lawsuit, for any document
 03:37:53 6 that could conceivably be related to the case, my policy
 03:37:58 7 and procedure has been to absolutely make sure that it's
 03:38:02 8 not deleted.
 03:38:03 9 MS. SCHMITT: Q. So even before the lawsuit,
 03:38:05 10 your personal practice was not to delete e-mails?
 03:38:12 11 A. Yeah, I can't recall deleting e-mails. In
 03:38:18 12 general, I don't delete e-mails.
 03:38:21 13 Q. And what about Word documents that you
 03:38:25 14 create?
 03:38:27 15 A. So most of the Word documents that I ever
 03:38:31 16 create are then attached to an e-mail and preserved that
 03:38:36 17 way. I don't ever delete files, certainly not since the
 03:38:44 18 lawsuit was filed. Before the lawsuit was filed,
 03:38:48 19 occasionally, I would switch computers, and I'd get a
 03:38:52 20 new computer, and it would be empty. And, you know, so
 03:38:56 21 there were -- you know, my old files would be left in
 03:38:59 22 the old computer, and sometimes I would throw out an old
 03:39:04 23 computer, or --
 03:39:04 24 Q. Since 2008, how many computers have you
 03:39:08 25 owned?

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03:39:14 1 A. 2008. So there was, I think, two desktop
 03:39:17 2 computers that I owned. One was a Hewlett Packard, I
 03:39:23 3 believe, and the other was a Dell computer.
 03:39:28 4 Q. Have you thrown away either of those
 03:39:30 5 computers?
 03:39:34 6 A. I believe I have both of those computers
 03:39:36 7 still.
 03:39:36 8 Q. Were they both searched -- did you search
 03:39:39 9 them both for documents for production in this case?
 03:39:42 10 A. Yes.
 03:39:42 11 Q. And have you owned any laptops since 2008?
 03:39:48 12 A. I have.
 03:39:49 13 Q. And how many?
 03:39:51 14 A. So I've owned -- right now I have a MacBook
 03:39:58 15 Air. Google just mailed me a -- I don't know what they
 03:40:03 16 call it -- a Chromium 48. It's a new computer they put
 03:40:08 17 out. I had a -- I think I had a -- I may have a broken
 03:40:13 18 Toshiba that I've owned; it's a laptop. I don't know
 03:40:17 19 that I've used it since 2008, but I believe I still have
 03:40:22 20 it.
 03:40:22 21 Q. Was that Toshiba laptop searched for
 03:40:25 22 documents?
 03:40:26 23 A. No.
 03:40:26 24 Q. Had you used it since you started working on
 03:40:28 25 the Mino project?

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03:40:32 1 A. I don't recall using it. I think on that
 03:40:36 2 Toshiba the screen may be broken.
 03:40:38 3 Q. Did you search any lap -- of your laptops for
 03:40:41 4 documents for production in this case?
 03:40:43 5 A. No.
 03:40:43 6 Q. Why not?
 03:40:45 7 A. Well, all of my work was done on those two
 03:40:50 8 desktops that I had. And the reason was that I had this
 03:40:55 9 back operation, so I was unable to sit down or travel or
 03:40:58 10 walk or do anything. And so all I was physically able
 03:41:02 11 to do was use a desk where I laid down on the ground,
 03:41:06 12 and I did all of my work and all of my personal
 03:41:14 13 interactions with the computer via those two desktops.
 03:41:18 14 And so all of my Xio Interactive work was done on those
 03:41:23 15 two desktops as well.
 03:41:25 16 Q. Are you a lawyer?
 03:41:26 17 A. I'm not a lawyer.
 03:41:28 18 Q. Have you ever studied law?
 03:41:30 19 A. What do you mean?
 03:41:32 20 Q. Have you ever gone to law school?
 03:41:33 21 A. I've never gone to law school.
 03:41:35 22 Q. Have you ever taken a course or class in law?
 03:41:41 23 A. I don't recall ever having a class -- you mean
 03:41:45 24 like a class at a law school about the law?
 03:41:48 25 Q. No, just a class on the law in college or

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03:41:54 1 high school.
 03:41:57 2 A. I'm sure I may have been in classes that talk
 03:42:00 3 about the law. I think in high school I had a summer
 03:42:06 4 school class called "Government." I don't really
 03:42:08 5 remember it that well.
 03:42:09 6 Q. Have you ever studied intellectual property
 03:42:11 7 law in a class?
 03:42:16 8 A. You know, I may have had a class that touched
 03:42:18 9 on intellectual property. I don't really recall.
 03:42:23 10 Q. What do you mean that "touched on
 03:42:24 11 intellectual property?"
 03:42:27 12 A. Well, I mean the term "intellectual property"
 03:42:30 13 may have been used in a class I took, or potentially the
 03:42:34 14 term wasn't used, but possibly something to do with
 03:42:37 15 intellectual property was covered in the class, but, you
 03:42:50 16 know, I don't really remember. A lot of the classes I
 03:42:51 17 took in college were computer classes, computer science,
 03:42:52 18 and I don't really remember my high school classes that
 03:42:55 19 well. I don't remember a class where I studied
 03:42:59 20 intellectual property.
 03:43:02 21 Q. And I think at the beginning of the
 03:43:03 22 deposition, at some point, you said you don't consider
 03:43:06 23 yourself an expert in intellectual property law; is
 03:43:09 24 that correct?
 03:43:09 25 A. I'm not a trained expert in intellectual

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03:43:11 1 property law.
 03:43:12 2 Q. Do you think you're an expert in intellectual
 03:43:16 3 property law?
 03:43:17 4 A. No, I think I tend to think of experts in
 03:43:23 5 intellectual property law as lawyers who have been
 03:43:27 6 trained with that expertise.
 03:43:29 7 Q. Well, it's possible that somebody could be a
 03:43:32 8 self-taught expert; is that true?
 03:43:37 9 A. I don't know that I have the expertise to even
 03:43:41 10 answer that.
 03:43:44 11 Q. Do you consider yourself as self-taught
 03:43:46 12 expert in intellectual property law?
 03:43:48 13 A. I do not consider myself an expert in
 03:43:52 14 intellectual property law because I haven't been -- I
 03:43:56 15 haven't gone to law school and I haven't been trained to
 03:43:59 16 be a lawyer.
 03:44:03 17 Q. Have you read the amended complaint in this
 03:44:06 18 case?
 03:44:08 19 A. I've seen the amended complaint in this case.
 03:44:10 20 Q. And you have a general understanding of the
 03:44:13 21 claims -- of plaintiff's claims in this case?
 03:44:16 22 A. I have an understanding of the facts in the
 03:44:20 23 case. I'm not sure that I have a legal understanding.
 03:44:26 24 Q. Do you have an -- I'm sorry.
 03:44:28 25 A. Well, I don't have an understanding -- I don't

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03:44:30 1 necessarily have an understanding of the legal concepts
 03:44:33 2 in the case.
 03:44:34 3 Q. Do you have an understanding of the legal
 03:44:35 4 issues in the case?
 03:44:37 5 A. I understand that there are legal issues in
 03:44:38 6 the case and maybe, in general, what they pertain to.
 03:44:42 7 Q. What's your general understanding of the
 03:44:44 8 legal issues in this case?
 03:44:48 9 A. My general understanding is that this is a
 03:44:50 10 case of intellectual property, which potentially
 03:44:56 11 includes copyright and trademark law.
 03:44:59 12 Q. And that's the extent of your general
 03:45:01 13 understanding?
 03:45:04 14 A. I mean, I think that's, like, the general
 03:45:07 15 topics of the case. I'm not sure. Is there something
 03:45:12 16 specific you're wondering about?
 03:45:15 17 Q. I'm asking you about your understanding. Do
 03:45:17 18 you think the issues are complicated in this case?
 03:45:22 19 A. You know, I don't think I've seen a law yet
 03:45:24 20 that isn't complicated. I think that's why we have
 03:45:28 21 lawyers and trained experts in the law. I think
 03:45:34 22 intellectual property is also complicated.
 03:45:40 23 Q. Prior to launching the Mino game, what
 03:45:43 24 efforts, if any, did you make to learn about the
 03:45:46 25 intellectual property rights associated with

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03:45:48 1 plaintiff's Tetris games?
 03:45:54 2 A. When you say the "plaintiff's Tetris games,"
 03:45:57 3 which games are you referring to?
 03:46:00 4 Q. Any games owned by or authorized by the
 03:46:05 5 Tetris Company.
 03:46:07 6 A. Okay. I believe that Xio Interactive did a
 03:46:15 7 trademark search for those products.
 03:46:21 8 Q. What do you mean "a trademark search for
 03:46:23 9 those products?"
 03:46:25 10 A. I think that there is an online registry of
 03:46:29 11 trademarks, and I recall that there was a search run on
 03:46:36 12 that Web site to see what the extent of the trademarks
 03:46:45 13 were, not necessarily the plaintiff's trademarks, but
 03:46:49 14 the trademarks surrounding the term "Tetris."
 03:46:53 15 Q. And who conducted that search?
 03:46:56 16 A. I don't remember exactly. It was probably
 03:47:01 17 Desiree. I might have been there, too. I don't
 03:47:04 18 remember.
 03:47:05 19 Q. And when was that done?
 03:47:08 20 A. I don't remember exactly when it was done.
 03:47:11 21 Q. Was it -- but it was before Mino was
 03:47:14 22 launched?
 03:47:16 23 A. I believe so. I don't know for certain, but I
 03:47:18 24 believe it was conducted before Mino was launched.
 03:47:20 25 Q. And how was the search conducted on the

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03:47:27 1 trademark Web site?
 03:47:30 2 A. I think they have a form you fill out where
 03:47:32 3 you just type in a word, and then they might have other
 03:47:35 4 options. I don't really remember, but I think you type
 03:47:39 5 in the word and hit search, and then they give you some
 03:47:43 6 sort of listing. That was the general way that it was
 03:47:46 7 done.
 03:47:46 8 Q. And was the term "Tetris" searched on this
 03:47:51 9 Web site?
 03:47:53 10 A. I believe that the term "Tetris" was probably
 03:47:57 11 searched.
 03:47:57 12 Q. And do you remember what the results were?
 03:48:01 13 A. I don't remember the exact results. I
 03:48:04 14 remember there were various listings under the term
 03:48:07 15 "Tetris" for -- on this trademark Web site, I think. I
 03:48:18 16 don't remember exactly what they were.
 03:48:19 17 Q. Did anyone make a printout or otherwise save
 03:48:22 18 these -- this -- these search results?
 03:48:32 19 A. I doubt anyone would have made a printout of
 03:48:34 20 it. They may have been saved.
 03:48:44 21 Q. What was done with this list of search
 03:48:49 22 results after you ran the search?
 03:48:53 23 A. I think we probably read the results and
 03:48:57 24 possibly saved them.
 03:49:01 25 Q. And did you take any other steps after

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Exhibit 05

**to the Declaration of Johanna Schmitt, Esq.
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In The Matter Of:

TETRIS HOLDING, LLC

v.

XIO INTERACTIVE INC.

MICHAEL CARTER - 30(b)6

January 31, 2011

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Legalink, Inc.

135 Main Street
4th Floor
San Francisco, CA 94105
Phone: 415.357.4300
Fax: 415.357.4301

<p style="text-align: center;">165</p> <p>04:07:02 1 things that he's upset with, and one of the things he</p> <p>04:07:05 2 mentions, briefly, is using one of those terms, and</p> <p>04:07:07 3 then --</p> <p>04:07:08 4 MS. CENDALI: Q. He says it was a rip-off of</p> <p>04:07:10 5 Mino, that's those terms I was asking in my question,</p> <p>04:07:13 6 correct?</p> <p>04:07:13 7 A. That is -- yes, that is --</p> <p>04:07:14 8 Q. And another user --</p> <p>04:07:14 9 A. -- what you were asking.</p> <p>04:07:15 10 Q. -- Somerandomdude said that Mino was copying</p> <p>04:07:20 11 Tetris, right?</p> <p>04:07:23 12 A. I don't know that that's what he said. He</p> <p>04:07:30 13 didn't refer directly to Mino. It's likely he was</p> <p>04:07:33 14 referring to the post made by Grubjelly originally where</p> <p>04:07:38 15 he does refer to Mino in that post, but, you know, I</p> <p>04:07:42 16 don't know that this user had Mino and had it to refer</p> <p>04:07:45 17 to. So I can't tell you if he was referring to Mino or</p> <p>04:07:49 18 not.</p> <p>04:07:50 19 Q. Is everything on this post about Mino?</p> <p>04:07:54 20 MS. MAITRA: Objection; overbroad.</p> <p>04:07:55 21 THE WITNESS: You know, there are 12 pages</p> <p>04:07:58 22 here. I'm not sure.</p> <p>04:08:06 23 MS. CENDALI: Q. This is about Mino, isn't</p> <p>04:08:06 24 it? What's pictured here? And the name of the post,</p> <p>04:08:08 25 the chain starts at the top, the post is "Help remove</p>	<p style="text-align: center;">167</p> <p>04:09:38 1 don't see any reference to that, no.</p> <p>04:09:41 2 Q. All right. Let's take a look at what's been</p> <p>04:09:50 3 marked as Exhibit 17 to this deposition.</p> <p>04:09:54 4 (Whereupon, Deposition Exhibit 17 was</p> <p>04:09:54 5 marked for identification.)</p> <p>04:10:05 6 MS. CENDALI: Q. The document at the top says</p> <p>04:10:06 7 "Tetris Company legal notes." Did you write this</p> <p>04:10:10 8 document?</p> <p>04:10:11 9 A. So I think, in large part, I authored this</p> <p>04:10:13 10 document. I wrote the -- well, let me make sure it's</p> <p>04:10:17 11 the one I think it is. Let me just go through it real</p> <p>04:10:20 12 quick. Yes, I think this is the document that I</p> <p>04:10:34 13 authored.</p> <p>04:10:35 14 Q. And when did you write this?</p> <p>04:10:43 15 A. You know, I'm not sure exactly when I wrote</p> <p>04:10:45 16 it. I think this letter refers to August 3rd, which I</p> <p>04:10:49 17 believe would be 2009, August 3rd. So I probably wrote</p> <p>04:10:53 18 this version of it after 2009, August 3rd.</p> <p>04:10:58 19 Q. After or before? I see. Because there's a</p> <p>04:11:06 20 reference to August 3rd, it would have to be after</p> <p>04:11:08 21 that.</p> <p>04:11:09 22 A. That's what I believe.</p> <p>04:11:10 23 Q. And turning to the bottom of Page 2 of the</p> <p>04:11:21 24 document, you write, "Firstly, we should look at the</p> <p>04:11:27 25 elements that are only present in Mino, and therefore</p>
<p style="text-align: center;">166</p> <p>04:08:12 1 Mino from the App Store." Look on Page 1. Isn't that</p> <p>04:08:16 2 the thread that everybody is writing about?</p> <p>04:08:19 3 A. Yes, I do see that.</p> <p>04:08:20 4 Q. Yes. And the screenshots that are depicted</p> <p>04:08:25 5 in this exhibit are of Mino; isn't that true?</p> <p>04:08:30 6 A. I see screenshots, and they look like it's the</p> <p>04:08:32 7 user Grubjelly playing Mino.</p> <p>04:08:34 8 Q. Okay. And when the user, Somerandomdude,</p> <p>04:08:40 9 wrote the only grounds for removal right now is that</p> <p>04:08:44 10 it's copying Tetris and the price seems to be funny,</p> <p>04:08:48 11 when you read that, you thought he was referring to</p> <p>04:08:51 12 Mino; isn't that true?</p> <p>04:08:53 13 MS. MAITRA: Objection; asked and answered.</p> <p>04:08:54 14 THE WITNESS: I don't know. I think it's</p> <p>04:08:55 15 possible that he was referring to Mino. It seems that</p> <p>04:08:59 16 since it's in this thread it's likely, but I don't know.</p> <p>04:09:02 17 MS. CENDALI: Q. And when you posted -- you</p> <p>04:09:04 18 put in a response to this -- these posts, didn't you, at</p> <p>04:09:08 19 xiomc; is that right?</p> <p>04:09:10 20 A. So I authored a response to Grubjelly's</p> <p>04:09:16 21 complaints.</p> <p>04:09:17 22 Q. Right. And nowhere in your response to</p> <p>04:09:20 23 Grubjelly did you say, hey, we're not a rip-off or a</p> <p>04:09:24 24 copy of Tetris, do you?</p> <p>04:09:28 25 A. Well, let me first find that. So I don't -- I</p>	<p style="text-align: center;">168</p> <p>04:11:30 1 are not the original work of the Tetris Company." Do</p> <p>04:11:32 2 you see that?</p> <p>04:11:34 3 MS. MAITRA: I'm sorry, I don't. Page 2?</p> <p>04:11:39 4 MS. CENDALI: Page 2 of the -- it's on Page 3</p> <p>04:11:42 5 of the actual document, Page 2 of the writing. Here.</p> <p>04:11:53 6 MS. MAITRA: I got it.</p> <p>04:11:56 7 MS. CENDALI: Q. And then underneath that, it</p> <p>04:11:57 8 says, "One, Stealth/slow button: This button feature is</p> <p>04:12:03 9 not present in any of the Tetris Company's works." Do</p> <p>04:12:06 10 you see that?</p> <p>04:12:06 11 A. I do see that.</p> <p>04:12:07 12 Q. What are you referring to when you wrote "the</p> <p>04:12:10 13 Tetris Company's works"?</p> <p>04:12:13 14 A. I was referring, I believe, to my knowledge of</p> <p>04:12:17 15 the works on the part of the Tetris Company.</p> <p>04:12:20 16 Q. And what -- did you do anything to come to</p> <p>04:12:26 17 the conclusion that you wrote in this memo that this</p> <p>04:12:29 18 button feature is not present in any of the Tetris</p> <p>04:12:31 19 Company's works?</p> <p>04:12:34 20 A. Yes. I think that I looked at a screenshot of</p> <p>04:12:39 21 the gameplay in the EA Tetris that I, at that point,</p> <p>04:12:42 22 believed was licensed from the Tetris Company to see if</p> <p>04:12:46 23 there was a slow button, and I didn't see that slow</p> <p>04:12:51 24 button there.</p> <p>04:12:52 25 Q. You wrote "in any of the Tetris Company's</p>

<p style="text-align: center;">181</p> <p>04:30:29 1 texture which we would then load up and display on the</p> <p>04:30:32 2 iPhone when the game started.</p> <p>04:30:33 3 Q. And that's all what you think copyright</p> <p>04:30:35 4 applies to of my client's works; is that right?</p> <p>04:30:38 5 MS. MAITRA: Objection; mischaracterizes</p> <p>04:30:40 6 testimony.</p> <p>04:30:40 7 THE WITNESS: So I'm speaking, I think, to --</p> <p>04:30:46 8 MS. CENDALI: Q. I'm trying to understand</p> <p>04:30:47 9 when you wrote, "The small bit of copyright law that</p> <p>04:30:50 10 does apply is solely to protect the graphical features</p> <p>04:30:54 11 used on individual elements in Mino." So what were you</p> <p>04:30:57 12 thinking was protected by copyright?</p> <p>04:30:58 13 A. So --</p> <p>04:31:00 14 MS. MAITRA: Objection; asked and answered.</p> <p>04:31:01 15 THE WITNESS: My understanding of what was</p> <p>04:31:03 16 protected by copyright included the graphical textures.</p> <p>04:31:09 17 That is to say, when Xio Interactive produced a</p> <p>04:31:15 18 graphical texture, that that exact sequence was our</p> <p>04:31:20 19 sequence that we built, and we owned, and it was</p> <p>04:31:24 20 different than the graphical sequence that the Tetris</p> <p>04:31:27 21 Company built for their game, and the two were</p> <p>04:31:31 22 discernibly different.</p> <p>04:31:32 23 And so copyright law applied to that where we</p> <p>04:31:36 24 couldn't take an exact copy of the texture files and we</p> <p>04:31:40 25 couldn't copy them onto a disk and then put them into</p>	<p style="text-align: center;">183</p> <p>04:32:56 1 MS. MAITRA: Objection; incomplete</p> <p>04:32:57 2 hypothetical.</p> <p>04:32:58 3 THE WITNESS: You know, I --</p> <p>04:33:01 4 MS. MAITRA: And, sorry, and calls for a legal</p> <p>04:33:03 5 conclusion.</p> <p>04:33:03 6 THE WITNESS: So I don't know what the</p> <p>04:33:08 7 legalities of that would be. I'm not a lawyer, and it's</p> <p>04:33:13 8 also really hard for me to speak to hypotheticals where</p> <p>04:33:16 9 there is no example put in front of me.</p> <p>04:33:19 10 I think that this is the sort of thing that's</p> <p>04:33:21 11 very complex, and that lawyers and judges spend a long</p> <p>04:33:27 12 time with examples in front of them to determine, and</p> <p>04:33:29 13 it's a very fine line, and I don't think I can answer</p> <p>04:33:32 14 your question with this hypothetical imagining of what</p> <p>04:33:34 15 you're saying because I don't really know what you mean</p> <p>04:33:37 16 without seeing an example. So if you want to put an</p> <p>04:33:40 17 example in front of me, you know, I can talk to my</p> <p>04:33:43 18 understanding of copyright law given that I'm not a</p> <p>04:33:47 19 lawyer and as it applies to that example.</p> <p>04:33:50 20 MS. CENDALI: Q. So, basically, Xio's</p> <p>04:33:51 21 position is that you know enough about copyright law to</p> <p>04:33:56 22 try to justify that you're not intentional infringers,</p> <p>04:33:59 23 but not so much about copyright law that you can answer</p> <p>04:34:03 24 a question; is that right?</p> <p>04:34:04 25 MS. MAITRA: Objection; mischaracterizes</p>
<p style="text-align: center;">182</p> <p>04:31:42 1 our game, that we had to build our own unique graphical</p> <p>04:31:45 2 textures, and that's what we did.</p> <p>04:31:49 3 MS. CENDALI: Q. Okay. Suppose the Walt</p> <p>04:31:49 4 Disney Company made a video game featuring Mickey Mouse.</p> <p>04:31:54 5 Do you believe that you could take that image of Mickey</p> <p>04:31:57 6 Mouse and change the texture of Mickey Mouse's pants,</p> <p>04:32:02 7 and that that would not be copyright infringement?</p> <p>04:32:06 8 MS. MAITRA: Objection; incomplete</p> <p>04:32:08 9 hypothetical; and mischaracterizes testimony.</p> <p>04:32:14 10 THE WITNESS: So it's really hard for me to</p> <p>04:32:17 11 speak to these sorts of descriptions without having some</p> <p>04:32:21 12 example in front of me. You know, I don't know what</p> <p>04:32:23 13 exactly the extent of the change you're talking about</p> <p>04:32:31 14 is.</p> <p>04:32:31 15 MS. CENDALI: Q. You never heard of Mickey</p> <p>04:32:32 16 Mouse?</p> <p>04:32:32 17 MS. MAITRA: Objection; mischaracterizes</p> <p>04:32:33 18 testimony.</p> <p>04:32:33 19 THE WITNESS: So that's not true. I have</p> <p>04:32:34 20 heard of Mickey Mouse.</p> <p>04:32:36 21 MS. CENDALI: Q. Okay. Mickey Mouse, same</p> <p>04:32:40 22 image, different graphical textures, do you believe that</p> <p>04:32:43 23 Mino could reproduce an image of Mickey Mouse with its</p> <p>04:32:48 24 own graphical image files without infringing on the Walt</p> <p>04:32:53 25 Disney Company's copyrights?</p>	<p style="text-align: center;">184</p> <p>04:34:07 1 testimony; and calls for a legal conclusion.</p> <p>04:34:11 2 MS. CENDALI: Q. That's true, isn't it?</p> <p>04:34:13 3 MS. MAITRA: Same objections.</p> <p>04:34:14 4 THE WITNESS: I don't think that's what I</p> <p>04:34:15 5 said. I think what I said was that copyright law is a</p> <p>04:34:20 6 complex thing.</p> <p>04:34:21 7 MS. CENDALI: Q. Right. And is it something</p> <p>04:34:24 8 that a lawyer should study?</p> <p>04:34:25 9 MS. MAITRA: Objection; vague.</p> <p>04:34:28 10 THE WITNESS: I don't know. I think some</p> <p>04:34:31 11 lawyers should study it.</p> <p>04:34:36 12 MS. CENDALI: Q. You believed, prior to</p> <p>04:34:37 13 releasing Mino, that copyright was a complex field of</p> <p>04:34:41 14 law; isn't that true?</p> <p>04:34:44 15 A. I probably believed that.</p> <p>04:34:46 16 Q. And you knew you weren't a lawyer, right?</p> <p>04:34:50 17 A. I knew that I wasn't a lawyer.</p> <p>04:34:52 18 Q. And nobody working on Mino was a lawyer,</p> <p>04:34:56 19 correct?</p> <p>04:34:57 20 A. I believe that's correct.</p> <p>04:34:57 21 Q. And Mino didn't have an in-house lawyer,</p> <p>04:35:00 22 right?</p> <p>04:35:02 23 A. I don't think that Xio employed a lawyer</p> <p>04:35:04 24 in-house.</p> <p>04:35:05 25 Q. And Xio did not obtain an opinion letter from</p>

<p style="text-align: center;">185</p> <p>04:35:08 1 a lawyer saying that it could release Mino without</p> <p>04:35:11 2 violating the copyrights of my client's works; isn't</p> <p>04:35:16 3 that true?</p> <p>04:35:17 4 A. I don't recall an opinion letter.</p> <p>04:35:19 5 Q. So now, let's keep looking at this document</p> <p>04:35:22 6 under where it says "Copyright." Do you see that?</p> <p>04:35:26 7 A. Yes.</p> <p>04:35:26 8 Q. And this is you writing, "Copyright." You</p> <p>04:35:29 9 wrote, "The Tetris Company has no relevant copyright</p> <p>04:35:33 10 protection that would prevent us from producing and</p> <p>04:35:36 11 selling Mino." Do you see that?</p> <p>04:35:37 12 A. I see that.</p> <p>04:35:39 13 Q. And that was in your opinion; is that right?</p> <p>04:35:41 14 A. That's correct.</p> <p>04:35:42 15 Q. Okay. Were you aware of the decision of the</p> <p>04:35:50 16 Customs office with regard to the protectability of the</p> <p>04:35:58 17 Tetris Company's works?</p> <p>04:36:00 18 MS. MAITRA: And just to be clear, you're</p> <p>04:36:01 19 asking whether Xio or whether --</p> <p>04:36:04 20 MS. CENDALI: Q. I'm asking whether Xio,</p> <p>04:36:06 21 prior to launching Mino, was aware of the decision of</p> <p>04:36:12 22 the Customs Department, in particular Judge Stump, with</p> <p>04:36:19 23 regard to the protectability of the Tetris Company's</p> <p>04:36:25 24 copyrights.</p> <p>04:36:27 25 A. At the time we looked at a whole range of</p>	<p style="text-align: center;">187</p> <p>04:37:59 1 possible, and, you know, I do remember that the memo</p> <p>04:38:04 2 wasn't used in our legal analysis. I personally -- you</p> <p>04:38:09 3 know, I wrote this legal analysis on behalf of Xio</p> <p>04:38:12 4 Interactive, and at the time I don't remember seeing</p> <p>04:38:16 5 that memo.</p> <p>04:38:18 6 Q. Isn't it true that Xio had in its possession</p> <p>04:38:27 7 Exhibit 18, this copy of the Customs Department</p> <p>04:38:36 8 decision?</p> <p>04:38:36 9 (Whereupon, Deposition Exhibit 18 was</p> <p>04:38:36 10 marked for identification.)</p> <p>04:38:43 11 THE WITNESS: So it does look like, according</p> <p>04:38:44 12 to this document, that Desiree had a copy of this</p> <p>04:38:47 13 Customs decision.</p> <p>04:38:48 14 MS. CENDALI: Q. Right. And so Xio had a</p> <p>04:38:51 15 copy of the Customs House decision; isn't that true?</p> <p>04:38:54 16 A. Yes, I think what I said was that Desiree</p> <p>04:38:57 17 Golen, on her desktop, had a copy of this Customs</p> <p>04:39:02 18 letter.</p> <p>04:39:03 19 Q. And isn't it true that Desiree Golen, CEO of</p> <p>04:39:07 20 Xio, was discussing this decision with other developers</p> <p>04:39:13 21 of Tetris-like games?</p> <p>04:39:21 22 MS. MAITRA: Objection; vague.</p> <p>04:39:22 23 THE WITNESS: You know, I'm not sure what you</p> <p>04:39:24 24 mean by that. I'm not sure which other developers</p> <p>04:39:28 25 you're talking about and which other games you're</p>
<p style="text-align: center;">186</p> <p>04:36:29 1 legal decisions and articles, and, you know, I remember</p> <p>04:36:32 2 reading a lot of different documents, and I don't</p> <p>04:36:34 3 remember being intimately familiar with that at the</p> <p>04:36:37 4 time. I do remember that it may have come up, and I</p> <p>04:36:42 5 glanced through it. I think I've since become more</p> <p>04:36:45 6 familiar with that since this lawsuit, but --</p> <p>04:36:48 7 Q. Are you --</p> <p>04:36:48 8 MS. MAITRA: So you're talking on behalf of</p> <p>04:36:50 9 Xio now, not just you, Michael Carter. Okay?</p> <p>04:36:53 10 THE WITNESS: So Xio Interactive may have been</p> <p>04:36:56 11 peripherally aware of that decision.</p> <p>04:36:59 12 MS. CENDALI: Q. Isn't it true that Xio</p> <p>04:37:00 13 Interactive -- isn't it true that Xio Interactive's CEO,</p> <p>04:37:10 14 Desiree Golen, had your sister do a memo about</p> <p>04:37:19 15 copyrightability of computer games?</p> <p>04:37:22 16 A. You know, I don't know that she had her do a</p> <p>04:37:25 17 memo necessarily. I think that she had asked her to</p> <p>04:37:27 18 look into IP law as it relates to video games and as it</p> <p>04:37:34 19 might apply to Xio Interactive.</p> <p>04:37:36 20 Q. And isn't it true that your sister wrote a</p> <p>04:37:40 21 memo that was provided to Xio Interactive that, among</p> <p>04:37:45 22 other things, discussed the Customs House -- the</p> <p>04:37:50 23 Customs Department decision?</p> <p>04:37:52 24 A. I believe that she wrote a memo, and I'd have</p> <p>04:37:55 25 to see the memo again to confirm that, but it's</p>	<p style="text-align: center;">188</p> <p>04:39:31 1 talking about.</p> <p>04:39:32 2 MS. CENDALI: Q. Are you aware that she was</p> <p>04:39:33 3 discussing this decision with Todd Bilborrow?</p> <p>04:39:43 4 A. I'm aware that she had discussions with Todd</p> <p>04:39:46 5 about his situation.</p> <p>04:39:48 6 Q. And isn't it true that you were also aware</p> <p>04:39:54 7 that -- and discussed with Ms. Golen whether she should</p> <p>04:39:58 8 write to Mr. Cormier, the lawyer who represented the</p> <p>04:40:02 9 entities opposite the Tetris Company in this decision</p> <p>04:40:07 10 of the Customs Department?</p> <p>04:40:12 11 A. I don't know that that's true. I think when</p> <p>04:40:15 12 you -- when you mention it, I think that Desiree may</p> <p>04:40:21 13 have been considering writing to Mr. Cormier, and, you</p> <p>04:40:24 14 know, I don't know exactly why. I don't think I was a</p> <p>04:40:29 15 big part of that decision. I think she may have at the</p> <p>04:40:33 16 time -- you know, she could have mentioned the different</p> <p>04:40:35 17 things she was working on and talking about and said</p> <p>04:40:38 18 that she was going to contact this person, I don't know.</p> <p>04:40:41 19 Q. So you wrote in your memo that, "The Tetris</p> <p>04:40:44 20 Company has no relevant copyright protection that would</p> <p>04:40:49 21 prevent us from producing and selling Mino," right?</p> <p>04:40:52 22 A. That is correct.</p> <p>04:40:53 23 Q. And you wrote that despite the fact that Xio</p> <p>04:40:56 24 knew that there was a Customs Department decision that</p> <p>04:41:02 25 discussed at length the protectable, copyrightable</p>

Exhibit 06

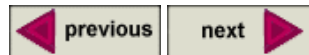
**to the Declaration of Johanna Schmitt, Esq.
in Support of Plaintiffs' Opposition to
Defendant's Motion for Summary Judgment**



Database Name: Copyright Catalog (1978 to present)

: Simple Search = tetris company

:



Labeled View

Kids Tetris.

Type of Work: Entry Not Found

Registration Number / Date: PA0001333348 / 2006-06-14

Title: Kids Tetris.

Description: Videogame.

Copyright Claimant: Tetris Holding, LLC

Date of Creation: 1996

Date of Publication: Approx. 1Jan97

Authorship on Application: audio-visual work: Blue Planet Software, Inc., & the Tetris Company, LLC, employer for hires for hire.

Previous Registration: Prior versions of video game preexisting.

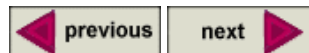
Basis of Claim: New Matter: new version including new graphics and music.

Copyright Note: Cataloged from appl. only.

Names: [Tetris Holding, LLC](#)

[Blue Planet Software, Inc.](#)

[Tetris Company, LLC](#)



Record Options

Select Download Format:	<input type="button" value="6"/>	<input type="button" value="Format for Print/Save"/>
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Save results for later:	<input type="button" value="Save To Bookbag"/>	

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Exhibit 07

**to the Declaration of Johanna Schmitt, Esq.
in Support of Plaintiffs' Opposition to
Defendant's Motion for Summary Judgment**

Copyright does not protect the idea for a game, its name or title, or the method or methods for playing it. Nor does copyright protect any idea, system, method, device, or trademark material involved in developing, merchandising, or playing a game. Once a game has been made public, nothing in the copyright law prevents others from developing another game based on similar principles. Copyright protects only the particular manner of an author's expression in literary, artistic, or musical form.

Material prepared in connection with a game may be subject to copyright if it contains a sufficient amount of literary or pictorial expression. For example, the text matter describing the rules of the game or the pictorial matter appearing on the gameboard or container may be registrable.

If your game includes any written element, such as instructions or directions, the Copyright Office recommends that you apply to register it as a literary work. Doing so will allow you to register all copyrightable parts of the game, including any pictorial elements. When the copyrightable elements of the game consist predominantly of pictorial matter, you should apply to register it as a work of the visual arts.

The deposit requirements will vary, depending on whether the work has been published at the time of registration. If the game is *published*, the proper deposit is one complete copy of the work. If, however, the game is published in a box larger than 12" x 24" x 6" (or a total of 1,728 cubic inches) then identifying material must be submitted in lieu of the entire game. (See "identifying material" below.) If the game is published and contains fewer than three three-dimensional elements, then identifying material for those parts must be submitted in lieu of those parts. If the game is *unpublished*, either one copy of the game or identifying material should be deposited.

Identifying material deposited to represent the game or its three-dimensional parts usually consists of photographs, photostats, slides, drawings, or other two-dimensional representations of the work. The identifying material should include as many pieces as necessary to show the entire copyrightable content of the work, including the copyright notice if it appears on the work. All pieces of identifying material other than transparencies must be no less than 3" x 3" in size, and not more than 9" x 12", but preferably 8" x 10". At least one piece of identifying material must, on its front, back, or mount, indicate the title of the work and an exact measurement of one or more dimensions of the work.

FL-108, Reviewed November 2010

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U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000
(202) 707-3000

Revised: 22-Dec-2010

[+]
FEEDBACK

Exhibit 08

**to the Declaration of Johanna Schmitt, Esq.
in Support of Plaintiffs' Opposition to
Defendant's Motion for Summary Judgment**

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

--000--
TETRIS HOLDING, LLC and THE)
TETRIS COMPANY, LLC,)
Plaintiffs and)
Counterclaim-Defendants,)
vs.) Civil Action No.
) 3:09-cv-6115 (FLW) (DEA)
XIO INTERACTIVE INC.,)
Defendant and)
Counterclaim-Plaintiff.)

VIDEOTAPED DEPOSITION OF
DESIREE GOLEN
January 28, 2011

REPORTED BY:
JULIE ANNE ZEIGLER, RPR, CSR 9750 JOB #432442

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EXAMINATION BY
MS. CENDALI 10

EXHIBITS MARKED FOR IDENTIFICATION

No. Description Page

Exhibit 1 E-mail from Desiree Golen to 29
Thomas Golen dated October 6, 2008.
Subject: iPhone app.
Bates stamped XIO-DG 927 - 931.

Exhibit 2 E-mail from Thomas Golen to Desiree 63
Golen dated October 7, 2008.
Subject: iPhone app. Bates stamped
XIO-DG 200021.

Exhibit 88 WordWeb Online dictionary definition 70
for "look like."

Exhibit 3 E-mail from Desiree Golen to Kathryn 78
Flynn dated October 6, 2008.
Subject: iPhone app. Bates stamped
XIO-DG 200016 - 200019.

Exhibit 4 Document entitled "Securities 88
Register."

Exhibit 5 Document entitled "Startup Expenses." 91
Bates stamped XIO-DG 932.

Exhibit 6 Document entitled "Sheet 1" dated 121
10/18/08 from Desiree Golen's desktop.
Bates stamped XIO-HD 1449.

Exhibit 7 E-mail from Desiree Golen to 124
licensing@tetris.com dated October 18,
2008. Subject: Tetris Licensing
Packages. Bates stamped XIO-DG 1194.

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EXHIBITS MARKED FOR IDENTIFICATION CONTINUED

No. Description Page

Exhibit 8 E-mail from Desiree Golen to Michael 130
Carter dated October 20, 2008.
Subject: Tetris Licensing Packages.
Bates stamped XIO-DG 1220 - 1221.

Exhibit 9 E-mail from Desiree Golen to Maura 131
Carter dated October 23, 2008.
Subject: Tetris Licensing Packages.
Bates stamped XIO-DG 1297 - 1298.

Exhibit 10 E-mail from Desiree Golen to 132
mauracarter@gmail.com dated October
22, 2008. Subject: iPhone Phun!
Bates stamped XIO-DG 1272.

Exhibit 11 Document with the file name "Business 135
Plan." Bates stamped XIO-HD 34.

Exhibit 12 Initial Disclosures of Defendant 145
Xio Interactive, Inc.

Exhibit 13 E-mail from Michael Carter to 147
Martin Hunt dated November 15, 2008.
Subject: Go see Mike Jurewitz
present about iPhone dev.
Bates stamped XIO-MH 7567.

Exhibit 14 E-mail from Desiree Golen to 150
Michael Carter dated November 20,
2008. Subject: Haha Tetris Article.
Bates stamped XIO-DG 20062.

Exhibit 15 E-mail from Michael Carter to 152
Martin Hunt, cc'd Desiree Golen
dated November 22, 2008. Subject:
Open GL. Bates stamped XIO-MC
19056 - 19057.

Exhibit 16 E-mail from Michael Carter to 154
xiointeractive@googlegroups.com
dated December 28, 2008. Subject:
Feature: Multiplayer room size?
Bates stamped XIO-XI 8 - 9.

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EXHIBITS MARKED FOR IDENTIFICATION CONTINUED

No. Description Page

Exhibit 17 E-mail from Desiree Golen to Richard 164
Lewis dated January 12, 2009.
Subject: Greetings! Bates stamped
XIO-DG 3936.

Exhibit 18 E-mail from Martin to Xio 167
Interactive dated January 19, 2009.
Subject: Menu Screen. Bates
stamped XIO-XI 20 - 22.

Exhibit 19 E-mail from Desiree to Xio 175
Interactive dated January 6, 2009.
Subject: Music. Bates stamped
XIO-XI 12.

Exhibit 20 E-mail from Martin Hunt to 179
xiointeractive@googlegroups.com
dated January 25, 2009. Subject:
User Input Feedback. Bates
stamped XIO-XI 25 - 26.

Exhibit 21 E-mail from Martin Hunt to 180
xiointeractive@googlegroups.com
dated February 3, 2009. Subject:
Multiplayer features: back to back
line clearing bonuses. Bates
stamped XIO-XI 33.

Exhibit 22 E-mail from Desiree Golen to 182
xiointeractive@googlegroups.com
dated February 11, 2009. Subject:
glacier tiles. Bates stamped
XIO-XI 83.

Exhibit 23 E-mail from Jacob Rus to 184
xiointeractive@googlegroups.com
dated February 11, 2009. Subject:
Nightmare Mode. Bates stamped
XIO-XI 91.

Exhibit 24 E-mail from Mario Balibrera to 185
xiointeractive@googlegroups.com
dated February 12, 2009. Subject:
Nightmare Mode. Bates stamped
XIO-XI 99 - 100.

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<p style="text-align: center;">257</p> <p>06:34:16 1 Q. Let's look at Exhibit 40.</p> <p>06:34:18 2 (Whereupon, Deposition Exhibit 40 was</p> <p>06:34:18 3 marked for identification.)</p> <p>06:34:20 4 MS. CENDALI: Q. Is this a draft or a letter</p> <p>06:34:22 5 that you wrote to a Mr. Cormier, who is a lawyer for the</p> <p>06:34:29 6 entity that the Customs office deemed was infringing my</p> <p>06:34:35 7 client's copyrights to the Tetris game?</p> <p>06:34:39 8 A. This is a letter to Mr. Cormier, Esquire.</p> <p>06:34:48 9 Q. And you understood that he was the lawyer who</p> <p>06:34:49 10 was representing the party adverse to the Tetris</p> <p>06:34:53 11 Company in the Customs decision, right?</p> <p>06:34:56 12 A. I think I understood that at the time.</p> <p>06:34:58 13 Q. Right. And did you ever send this letter?</p> <p>06:35:04 14 A. I don't know. I'd have to check my sent</p> <p>06:35:08 15 folders in Gmail.</p> <p>06:35:09 16 Q. Would that indicate to you whether you've</p> <p>06:35:11 17 actually sent this or not?</p> <p>06:35:13 18 A. Yes.</p> <p>06:35:14 19 Q. All right. Put a note in the record and ask</p> <p>06:35:17 20 you to do that.</p> <p>06:35:19 21 Did you ever get any response from</p> <p>06:35:20 22 Mr. Cormier?</p> <p>06:35:24 23 A. I don't remember if I sent it, and I don't</p> <p>06:35:25 24 remember if I got a response.</p> <p>06:35:27 25 Q. Do you remember ever speaking to Mr. Cormier?</p>	<p style="text-align: center;">259</p> <p>06:37:10 1 Exhibit 41 to Mr. Reback, the lawyer -- one of the</p> <p>06:37:19 2 lawyers involved in Lotus v. Borland.</p> <p>06:37:22 3 (Whereupon, Deposition Exhibit 41 was</p> <p>06:37:22 4 marked for identification.)</p> <p>06:37:22 5 MS. CENDALI: Q. Did you ever send that</p> <p>06:37:23 6 e-mail?</p> <p>06:37:24 7 A. I'm not really sure. Like I said, I sent and</p> <p>06:37:26 8 drafted a lot of e-mails, so I would have to check</p> <p>06:37:29 9 specifically.</p> <p>06:37:30 10 Q. I ask you to do so.</p> <p>06:37:32 11 And did you ever speak to Mr. Reback?</p> <p>06:37:35 12 A. I don't believe I spoke to Mr. Reback.</p> <p>06:37:38 13 Q. And let's look at Exhibit 38.</p> <p>06:37:42 14 (Whereupon, Deposition Exhibit 38 was</p> <p>06:37:42 15 marked for identification.)</p> <p>06:37:43 16 MS. CENDALI: Q. Is this the copy of the</p> <p>06:37:45 17 Customs decision that we were talking about that was</p> <p>06:37:47 18 sent to you by Mr. Bilsborrow?</p> <p>06:37:53 19 MS. MAITRA: Bilsborrow, I think.</p> <p>06:37:55 20 MS. CENDALI: Thank you.</p> <p>06:38:12 21 THE WITNESS: This looks like the case.</p> <p>06:38:14 22 Again, I haven't read it in a long time.</p> <p>06:38:17 23 MS. CENDALI: Q. Well, turning to Page 3 of</p> <p>06:38:20 24 the exhibit, second page of the opinion, the third page</p> <p>06:38:28 25 of the opinion itself, at the bottom of the page there's</p>
<p style="text-align: center;">258</p> <p>06:35:30 1 A. I don't recall speaking to him.</p> <p>06:35:34 2 Q. On the second page of the letter to</p> <p>06:35:35 3 Mr. Cormier, you wrote in a paragraph that starts,</p> <p>06:35:39 4 "Furthermore," and you talk about Reback's victory in</p> <p>06:35:44 5 Borland versus Lotus. Do you see that?</p> <p>06:35:48 6 A. Um-hum.</p> <p>06:35:49 7 Q. And then you go on to state at the bottom of</p> <p>06:35:51 8 that paragraph, "If this extends to the operation and</p> <p>06:35:54 9 mechanics of a tetromino game, this standard should</p> <p>06:35:56 10 allow software developers to create original 'clones'</p> <p>06:36:02 11 of copyrighted software products without infringing the</p> <p>06:36:06 12 copyright." Do you see that?</p> <p>06:36:09 13 A. Um-hum.</p> <p>06:36:11 14 Q. When you refer to "clones of copyrighted</p> <p>06:36:14 15 software," what were you referring to?</p> <p>06:36:16 16 A. So the sentence right before it says, "If this</p> <p>06:36:18 17 extends to the operation and mechanics of a tetromino</p> <p>06:36:22 18 game." So I believe I was referring to producing a</p> <p>06:36:25 19 tetromino game with similar operation and mechanics.</p> <p>06:36:36 20 Q. When you -- were you referring to your</p> <p>06:36:38 21 proposed game that became Mino as a clone of Tetris?</p> <p>06:36:46 22 A. I don't -- I didn't mention Mino in this</p> <p>06:36:49 23 sentence. I wouldn't call Mino a clone. I would call</p> <p>06:36:53 24 it a tetromino game.</p> <p>06:36:58 25 Q. You go on to state -- so let me also show you</p>	<p style="text-align: center;">260</p> <p>06:38:31 1 a paragraph that starts, "Video games." It says, "Video</p> <p>06:38:37 2 games, unlike an artist's painting." Do you see what</p> <p>06:38:40 3 I'm referring to?</p> <p>06:38:41 4 A. Um-hum.</p> <p>06:38:41 5 Q. "Unlike an artist's painting or even other</p> <p>06:38:45 6 audiovisual works, appeal to an audience that is fairly</p> <p>06:38:47 7 indiscriminating insofar as their concern about more</p> <p>06:38:52 8 subtle differences in artistic expression. The main</p> <p>06:38:56 9 attraction of such games lies in the stimulation</p> <p>06:38:59 10 provided by the intensity of the competition. A person</p> <p>06:39:03 11 who is entranced by the play of a game would be</p> <p>06:39:05 12 disposed to overlook many of the minor differences in</p> <p>06:39:08 13 detail and regard their aesthetic appeal as the same."</p> <p>06:39:13 14 Do you see that?</p> <p>06:39:13 15 A. Um-hum.</p> <p>06:39:14 16 Q. Do you agree with that?</p> <p>06:39:16 17 A. That's a really, really jam-packed few</p> <p>06:39:19 18 sentences. I'm not even sure -- which part of it</p> <p>06:39:28 19 exactly? There's, I think, three, four -- there's</p> <p>06:39:31 20 probably, like, five statements there.</p> <p>06:39:33 21 Q. Well, the statement, "The main attraction of</p> <p>06:39:35 22 such games lies in the stimulation provided by the</p> <p>06:39:38 23 intensity of the competition. A person who is</p> <p>06:39:42 24 entranced by the play of the game would be disposed to</p> <p>06:39:46 25 overlook many of the minor differences in detail and</p>

Exhibit 09

**to the Declaration of Johanna Schmitt, Esq.
in Support of Plaintiffs' Opposition to
Defendant's Motion for Summary Judgment**

In The Matter Of:

TETRIS HOLDING, LLC, ET AL.

v.

XIO INTERACTIVE INC.

DESIREE GOLEN - Vol. 2

February 10, 2011

MERRILL CORPORATION

LegalLink, Inc.

135 Main Street
4th Floor
San Francisco, CA 94105
Phone: 415.357.4300
Fax: 415.357.4301

DESIREE GOLEN - 2/10/2011

11:12:40	1	THE VIDEOGRAPHER: Please proceed.	1	her?
11:12:41	2	EXAMINATION BY MS. SCHMITT	2	A. The last time I had contact with her was via
11:12:42	3	MS. SCHMITT: Q. Thank you. I'd like to mark	3	e-mail sometime, I think, in 2009. She introduced me to
11:12:43	4	as -- I'd like to introduce Exhibit 101.	4	a friend of hers who was a game designer.
11:12:44	5	(Whereupon, Deposition Exhibit 101 was	5	Q. Who was that?
11:12:45	6	marked for identification.)	6	A. I don't exactly remember his full name. I
11:12:46	7	MS. SCHMITT: Q. Ms. Golen, have you seen	7	think his -- Bernard. I think it was Bernard.
11:12:47	8	this document before?	8	Q. Bernard Schmalzried?
11:12:48	9	A. I believe I have.	9	A. Yes.
11:12:49	10	Q. And your counsel has represented to us that	10	Q. Okay.
11:12:50	11	you are verifying these interrogatory responses. Do	11	Julie, that's S-C-H-M-A-L-Z-R-I-E-D.
11:12:51	12	you understand that?	12	And the interrogatory response provides that
11:12:52	13	A. Yes.	13	Xio communicated with Paula Kasler regarding the
11:12:53	14	Q. Can you turn to the response to interrogatory	14	intellectual property rights of video games and
11:12:54	15	number nine, which -- these pages aren't numbered,	15	Tetrimino games; is that correct?
11:12:55	16	but -- the first bullet point in that response says	16	A. Yes. So at this networking event, it was just
11:12:56	17	Maura Carter. Do you see that?	17	a lot of lawyers, and they were talking about what they
11:12:57	18	A. I do.	18	were interested in, and I was talking a little bit about
11:12:58	19	Q. So this -- who is Paula Kasler?	19	the fact that we were making a Tetrimino game. And I
11:12:59	20	A. Paula Kasler is an attorney that I met at a --	20	think I probably brought up that there were a few other
11:13:00	21	kind of like a networking event in Palo Alto.	21	Tetrimino game developers who had received cease and
11:13:01	22	Q. When did you meet her?	22	desist letters from the Tetris Company. So I don't
11:13:02	23	A. I don't remember exactly. It was probably	23	exactly remember everything that we talked about, but I
11:13:03	24	either in 2008 or 2009, yeah.	24	think I probably mentioned -- talked a little bit about
11:13:04	25	Q. And when's the last time you had contact with	25	intellectual property rights of video games.
		319		320
11:13:05	1	Q. And what did you talk about -- what did you	1	event, you can't recall any other communications with
11:13:06	2	say about the intellectual property rights of video	2	her?
11:13:07	3	games?	3	A. Yeah, to the best of my knowledge, I can't
11:13:08	4	A. I don't remember. Again, it was, like, about	4	recall anything else.
11:13:09	5	two years ago. So, in general, what I do remember is we	5	Q. And the networking event was an affair with
11:13:10	6	talked about them, that that subject was brought up. I	6	many people in attendance?
11:13:11	7	don't remember the specifics, though.	7	MS. MAITRA: Objection; vague.
11:13:12	8	Q. And other than that networking event, did you	8	THE WITNESS: Yes, it was a -- it was just, I
11:13:13	9	speak to Ms. Kasler about intellectual property rights	9	think, a firm's opening party. They were launching, and
11:13:14	10	after that event? Or other than that event, sorry, did	10	I was invited.
11:13:15	11	you speak to Ms. Kasler about IT rights?	11	MS. SCHMITT: Q. Okay. And how long did you
11:13:16	12	MS. MAITRA: Objection; vague.	12	speak to Ms. Kasler at that event?
11:13:17	13	THE WITNESS: I don't exactly know. I'm not	13	A. I don't recall exactly. We talked about other
11:13:18	14	sure when all these communications happened. I know I	14	things; her daughter and, you know, I think education.
11:13:19	15	met her at this networking event, and I brought up that	15	So I'd say maybe an hour or so.
11:13:20	16	we were making a Tetrimino game. And then mostly	16	Q. Did Ms. Kasler work for a law firm?
11:13:21	17	likely -- I think we were in a group of people -- we	17	A. I believe she did.
11:13:22	18	might have talked about video games, intellectual	18	Q. What was the name of her law firm?
11:13:23	19	property rights. I think, like I said, she sent me an	19	A. I don't recall.
11:13:24	20	e-mail introduction to someone else. So she might have	20	Q. And did you retain Ms. Kasler?
11:13:25	21	asked for like a status of where we were, and I'm not	21	A. No.
11:13:26	22	sure exactly what I -- any of our communications beyond	22	Q. And did you show her the Mino game?
11:13:27	23	that.	23	A. No, I don't believe we did. I don't think at
11:13:28	24	MS. SCHMITT: Q. Okay. So other than the	24	that time we even had a Mino game.
11:13:29	25	e-mail that you referenced and then this networking	25	Q. Did you show her any prototype of a Mino
		321		322

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<p>111::19:39 111::19:27 111::19:28 111::19:29 111::19:40 111::19:42 111::19:44 111::19:46 111::19:49 111::19:51 111::19:54 111::20:00 111::20:03 111::20:08 111::20:09 111::20:17 111::20:18 111::20:19 111::20:23 111::20:26 111::20:30 111::20:30 111::20:39 111::20:42 111::20:46</p>	<p>1 game? 2 A. I don't believe so. I don't remember what I 3 brought with me to that networking event. Most likely I 4 had a few business cards, and, you know, I didn't really 5 carry much around. So I think I probably just came with 6 myself and conversation. 7 Q. So other than maybe a business card, you 8 didn't show Ms. Kasler any materials; is that correct? 9 A. Not that I can recall. 10 Q. Okay. Did you discuss the Customs opinion 11 with her? And when I say "Customs opinion," I mean the 12 Customs opinion that was marked in your deposition as 13 Exhibit 38, which had to do with Tetris and an 14 infringing Tetris game. 15 MS. MAITRA: So are you going to show us the 16 Customs decision? 17 MS. SCHMITT: Sure, if you don't remember it. 18 Frank, please show it to them. 19 MR. CARLOW: Sure. 20 MS. MAITRA: Is this Exhibit 2 to this? 21 MS. SCHMITT: No. Well, this was marked as 22 Exhibit 38 in Ms. Golen's -- it's already been marked. 23 We just don't have the marked copy back. 24 MS. MAITRA: Sorry, the interrogatory was 25 Exhibit 1?</p>	<p>1 MR. CARLOW: 101. 2 MS. MAITRA: Okay. 3 THE WITNESS: I'm sorry, what was your 4 question? 5 MS. SCHMITT: Q. Did you discuss this Customs 6 decision with Ms. Kasler? 7 A. I don't believe I did. I don't remember when 8 the networking event was, and I don't remember when I 9 read this exactly, and I don't think I would have talked 10 to her about it. She wasn't an IP attorney. It was 11 mostly just a good person who I met. 12 Q. Did she -- did she say that she thought your 13 game would not infringe on my client's rights in the 14 Tetris game? 15 A. I don't believe we talked about any specific 16 questions like that. Again, we -- I think I might have 17 mentioned that I was doing a Tetrimino game, and we 18 might have talked a little bit about video game 19 intellectual property rights, but she wasn't an IP 20 lawyer, so we talked about other things. 21 Q. Okay. And who is Sean DeBruine? 22 A. Sean DeBruine is another lawyer that I met at 23 that networking event, and I found out in passing that 24 he worked on the Lotus versus Borland case. So I got 25 really excited. I remember I think I had read that case</p>
<p>111:20:00 111:20:03 111:20:09 111:22:00 111:22:06 111:22:04 111:22:08 111:22:11 111:22:14 111:22:17 111:22:20 111:22:24 111:22:23 111:22:40 111:22:43 111:22:49 111:22:53 111:22:57 111:23:04 111:23:07 111:23:12 111:23:16 111:23:20 111:23:23 111:23:26 111:23:28 111:23:43 111:23:46 111:23:48 111:23:54 11:21:59 111:23:02</p>	<p>1 a few nights before, and I was super excited to meet 2 someone on the case. 3 Q. Did the Lotus v. Borland case have to do with 4 video games? 5 A. You know, it's been a long time since I read 6 that case and kind of came to -- made a strong analysis 7 of it in my own head. So I don't actually remember the 8 specifics of that case at all. I think it was about two 9 years ago that I read it for the first time. 10 Q. And Sean, I'm sorry DeBruine is how you 11 pronounce his name? 12 A. I think so. 13 Q. Okay. And you met him at the same networking 14 event that you met Ms. Kasler? 15 A. That's correct. 16 Q. And other than that networking event, did you 17 have any contact with Mr. DeBruine? 18 A. I think we kept in contact via e-mail a few 19 times, and we went out to lunch another time. And, 20 again, with a lot of these lawyers, they would check in 21 with me and ask for a status update, and, occasionally, 22 I would just tell them what was going on. 23 Q. What -- did Mr. DeBruine work for a firm? 24 A. Yeah, he worked -- he did work for a firm. I 25 don't remember the name of that firm off the top of my</p>	<p>1 head. 2 Q. Did you show Mr. DeBruine Mino? 3 A. I don't remember exactly. I probably didn't 4 at that first networking event because I don't think we 5 had Mino. And then I don't -- I don't believe I showed 6 him Mino. It's possible -- it's possible that I might 7 have sent a promo code to a few of these people, but I 8 don't -- I don't recall off the top of my head. 9 Q. But you don't recall showing Mr. DeBruine 10 Mino before it was launched on the iTunes Store? 11 A. I don't remember. I don't remember when we 12 met for lunch, and I don't remember how that kind of 13 comes into the timeline of when we launched. And I 14 don't -- I don't specifically remember showing him Mino. 15 Q. Did you show Mr. DeBruine any of the games 16 called Tetris? 17 A. By "show," what exactly do you mean? 18 Q. Sent him a video clip of gameplay, show him 19 screenshots from a game, show him an actual game on 20 your computer or his computer, something like that. 21 A. Can you repeat the question? 22 Q. Yeah. 23 Can you repeat the question, Julie? 24 (Record read as follows: 25 Q. Did you show Mr. DeBruine any of the games called Tetris?)</p>

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11:29:13 11:29:21 11:29:23 11:29:24 11:29:26 11:29:27 11:29:28 11:29:28 11:30:52 11:29:34 11:30:35 11:29:36 11:31:00 11:29:40 11:31:06 11:29:41 11:29:08 11:29:44 11:29:09 11:29:46 11:29:51 11:29:53 11:29:55 11:29:57 11:30:00 11:30:04 11:30:07 11:30:30 11:30:34 11:30:37 11:30:42 11:30:46	<p>1 A. By this time -- (conference room phone rings.)</p> <p>2 MS. MAITRA: It's not here.</p> <p>3 MS. SCHMITT: No, no. it's here, sorry.</p> <p>4 Somebody just walked in the room.</p> <p>5 Anyway, I'm sorry, could we -- could we --</p> <p>6 could you read back my last question? It was a little</p> <p>7 distracting.</p> <p>8 (Record read as follows:</p> <p>9 Q. But it was after you had</p> <p>10 decided to create Mino, correct?)</p> <p>11 THE WITNESS: Yes, I think that's fair to say.</p> <p>12 MS. SCHMITT: Q. And it was before Mino was</p> <p>13 launched, correct?</p> <p>14 A. I don't know.</p> <p>15 Q. Okay. Did you produce the e-mail between --</p> <p>16 the e-mail correspondence between you and Professor</p> <p>17 Samuelson?</p> <p>18 A. I turned over my Google account to my lawyers</p> <p>19 for production. So anything related to Xio Interactive</p> <p>20 should have been produced.</p> <p>21 Q. And did Professor Samuelson -- did you show</p> <p>22 Professor Samuelson Mino?</p> <p>23 A. When you say "show," again, are you talking</p> <p>24 about a screenshot, a video?</p> <p>25 Q. In any way, sending her screenshots, sending</p> <p>her videos, sending her a link, sending her a copy of</p> <p>331</p>	<p>1 the game, anything.</p> <p>2 A. I don't recall exactly.</p> <p>3 Q. Did you send her any materials about Mino?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you have any reason to believe you did?</p> <p>6 A. Again, I had a lot of content that I was kind</p> <p>7 of juggling, and when I was reaching out to people, I</p> <p>8 would send some things their way and others not. So I</p> <p>9 don't know what I would have sent to whom and when and</p> <p>10 why.</p> <p>11 Q. Who on this list do you recall sending images</p> <p>12 of Mino to?</p> <p>13 MS. MAITRA: And for the record, you're</p> <p>14 referring to the further supplemental response to</p> <p>15 interrogatory number nine, correct?</p> <p>16 MS. SCHMITT: Yes.</p> <p>17 THE WITNESS: Let's see. Sorry, was that</p> <p>18 screenshots of Mino?</p> <p>19 MS. SCHMITT: Q. Anything. Screenshots,</p> <p>20 video clips, a copy of the game, sketches of the</p> <p>21 prototype. I mean any -- anything you're showing about</p> <p>22 Mino, who did you send materials like that to?</p> <p>23 A. So do you want to just go through the list?</p> <p>24 Q. Sure.</p> <p>25 A. Okay. So Maura Carter, I think at one point</p> <p>332</p>
11:31:46 11:31:52 11:31:52 11:32:03 11:32:06 11:32:30 11:32:38 11:32:42 11:32:49 11:32:53 11:32:59 11:32:02 11:32:06 11:32:08 11:32:08 11:32:08 11:32:40 11:32:42 11:32:46 11:32:51 11:32:59 11:33:03 11:33:06 11:33:39 11:33:42 11:33:46	<p>1 she mentioned that she had downloaded Mino off the App</p> <p>2 Store. So I think she had a copy of Mino. I'm not sure</p> <p>3 about Julie Turner. I think I might have sent her a</p> <p>4 promo code.</p> <p>5 Q. Okay. All right. What I'm interested in is</p> <p>6 before Mino was launched on the iTunes Store.</p> <p>7 A. Okay.</p> <p>8 Q. So if people got a copy once it was on the</p> <p>9 iTunes store, I'm not interested in that. Who did you</p> <p>10 show Mino to before it was launched?</p> <p>11 A. I actually don't really remember. All this</p> <p>12 happened a long time ago, and I don't recall exactly.</p> <p>13 Q. So is there anybody on this list that you</p> <p>14 remember sending Mino to?</p> <p>15 MS. MAITRA: And objection. You mean before</p> <p>16 Mino was launched, correct?</p> <p>17 MS. SCHMITT: Correct.</p> <p>18 THE WITNESS: Before Mino was launched, I</p> <p>19 don't recall. Again, it's probably in my e-mail. It is</p> <p>20 in my e-mail if I sent them anything. And I remember</p> <p>21 reviewing my e-mails in order to write this up, but it's</p> <p>22 been a few weeks since I wrote this, and I don't recall</p> <p>23 exactly.</p> <p>24 MS. SCHMITT: Q. So what you're saying is you</p> <p>25 don't recall anyone now. If you did send any materials</p> <p>333</p>	<p>1 about Mino to these people before Mino was launched, it</p> <p>2 would be reflected in your e-mails, and those would have</p> <p>3 been produced to us?</p> <p>4 A. I believe that's what I'm saying.</p> <p>5 Q. Who is Joshua Cook?</p> <p>6 A. Joshua Cook is another -- I think he's an</p> <p>7 intellectual property lawyer. Oh, no, Joshua is a</p> <p>8 corporate lawyer that I met at a networking event, and</p> <p>9 he ended up introducing me to Colin D. Chapman.</p> <p>10 Q. And was this networking event the same</p> <p>11 networking event that you met Mr. DeBruine and</p> <p>12 Ms. Kasler?</p> <p>13 A. No.</p> <p>14 Q. When was this networking event that you met</p> <p>15 Mr. Cook?</p> <p>16 A. I don't remember exactly. I know it was after</p> <p>17 the first networking event that I met Paula and Sean. I</p> <p>18 don't remember exactly when it was other than it was</p> <p>19 after that one.</p> <p>20 Q. Approximately how long after?</p> <p>21 A. I have almost no idea. Maybe between one to</p> <p>22 four months. Maybe more.</p> <p>23 Q. Was it -- was this networking event before</p> <p>24 Mino was launched?</p> <p>25 A. I don't remember.</p> <p>334</p>

Pages 331 to 334

11:36:59 1 Q. Other than meeting him at the networking
11:36:22 2 event, did you have further communications with
11:36:26 3 Mr. Cook?
11:36:36 4 A. Yeah, I think he put me in touch with his --
11:36:04 5 his firm's intellectual property lawyer, Colin D.
11:36:08 6 Chapman, and the three of us met sometime after that
11:36:44 7 initial networking event.
11:36:46 8 Q. And what was the firm?
11:36:29 9 A. It's on the tip -- I don't remember the name
11:36:23 10 of the firm. If I heard it, I could probably recognize
11:36:38 11 it, though.
11:37:02 12 Q. Did anyone at -- did you -- sorry, excuse me.
11:37:09 13 Let me start again.
11:37:06 14 Did you retain Mr. Cook's firm to represent
11:37:03 15 you or Xio?
11:37:02 16 A. We didn't sign a retainer agreement with
11:37:47 17 Joshua Cook or Colin D. Chapman or their firm.
11:37:22 18 Q. Did anyone at that firm, including Mr. Cook
11:37:35 19 and Mr. Chapman, tell you that Mino would not infringe
11:37:06 20 anyone's rights before it was launched on the App
11:37:02 21 Store?
11:37:06 22 A. I don't exactly remember what they told me
11:37:09 23 specifically, but, again, I was meeting with these
11:37:54 24 lawyers to solidify my understanding of copyright and
11:37:55 25 video gaming and our work with Mino. So I do remember

1 that I came out with the understanding that we could
2 produce our own game natively in-house with our own
3 source code, music files, graphic files, and that that
4 was perfectly legal.

5 **Q. But you did not show Mr. Cook, Mr. Chapman,**
6 **or anyone else at their firm any images of your work on**
7 **Mino, correct?**

8 A. I don't remember if I did or if I didn't. I
9 just don't remember.

10 **Q. And you didn't show Mr. Cook or Mr. Chapman**
11 **or anyone else at their firm any games called Tetris;**
12 **is that correct?**

13 A. Again, I don't remember what I showed them
14 specifically.

15 **Q. Do you have any reason to believe that you**
16 **showed them any images from a game called Tetris?**

17 A. There was at one point a -- there was a
18 screenshot. There were two images of -- if you do a
19 Google search, I think there's a screenshot for Tris and
20 EA's iPhone game called Tetris, and I think I might have
21 brought that up. I don't know exactly because I
22 remember studying that image, but that's the only thing
23 I can think of if I did bring that up. I might have
24 told them to reference that.

25 **Q. When did -- you said you studied that image**

11:39:29 1 you found on Google?

11:39:04 2 A. I think I brought it up and I looked at it,

11:39:09 3 yeah.

11:39:08 4 **Q. And when did you look at that?**

11:39:38 5 A. I don't remember exactly. I think there's --

11:39:46 6 **Q. Was it before the launch of -- it was before**

11:39:49 7 **the launch of Mino?**

11:39:42 8 A. I think so. I think it was before the launch

11:39:25 9 of Mino.

11:39:26 10 **Q. And did you show that EA Tetris screenshot to**

11:40:02 11 **anyone on this list in interrogatory number nine?**

11:40:03 12 A. I don't remember exactly. I just remember

11:40:06 13 that was an image. I think Michael drew up a document

11:40:07 14 called Tetris Company Legal Notes, or something like

11:40:43 15 that, and I think he might have used that screenshot in

11:40:20 16 there as well. So I know that was -- that was something

11:40:26 17 that we were kind of looking at, and we might have shown

11:40:29 18 people at some point. So we might not have. I just

11:40:30 19 don't remember who we did and didn't, and when we

11:40:35 20 actually game into possession of that.

11:40:36 21 **Q. Can you remember showing -- okay. My**

11:40:36 22 **question was can you remember showing anyone on this**

11:40:43 23 **list in interrogatory number nine the screenshot from**

11:40:42 24 **EA's Tetris game?**

11:40:48 25 A. I don't -- I don't remember specifically, but

1 I think with Julie Turner, we -- she might have looked
2 at that. We all had laptops. So I think she might have
3 pulled it up on Google. I don't remember specifically.

4 **Q. Did you -- did she compare the EA Tetris**
5 **screenshot to any images of Mino?**

6 A. I don't remember if we showed her Mino, if we
7 had Mino at that time. All I remember is that we were
8 talking about the game rules of certain games, and we
9 kind of went through a certain number of game rules with
10 these two screenshots.

11 **Q. The two screenshots being Tris and EA's**
12 **Tetris game?**

13 A. I believe so.

14 **Q. Did Ms. Turner ever -- to your knowledge, did**
15 **Ms. Turner ever compare EA's Tetris game to Mino?**

16 A. I'm not sure if she compared any games to
17 Mino. I'm not -- I don't know if she had access to
18 Mino.

19 **Q. Okay. And did Ms. -- Ms. Turner was a**
20 **lawyer, right?**

21 A. Um-hum.

22 **Q. Or is a lawyer. Did she work for a law firm?**
23 MS. MAITRA: Objection; asked and answered.
24 THE WITNESS: Yes, she does.
25 MS. SCHMITT: Q. And did she give you --

DESIREE GOLEN - 2/10/2011

11:40:07 11:40:04 11:40:06 11:40:08 11:40:09 11:41:00 11:42:03 11:42:07 11:42:09 11:42:14 11:42:16 11:42:17 11:42:21 11:42:25 11:42:29 11:42:30 11:42:30 11:42:38 11:42:47 11:42:44 11:42:50 11:42:54 11:42:58 11:43:02 11:43:08 11:43:09 11:43:10 11:43:10 11:43:17	<p>1 Ms. Turner give you -- or let me start again.</p> <p>2 Did Ms. Turner ever tell you before Mino was</p> <p>3 launched that it would not infringe anyone's rights?</p> <p>4 MS. MAITRA: Objection; vague.</p> <p>5 THE WITNESS: Again, when I was meeting with</p> <p>6 these lawyers, the purpose was to solidify my</p> <p>7 understanding of copyright and video games. I don't</p> <p>8 remember specifically what she told me or what we talked</p> <p>9 about. But in, in general, I remember that I came out</p> <p>10 of these meetings with the understanding that we could</p> <p>11 produce a game with our own native source code, image</p> <p>12 files, music files, graphic files, and that would be</p> <p>13 legal.</p> <p>14 MS. SCHMITT: Q. I don't think you answered</p> <p>15 my question.</p> <p>16 Julie, would you mind reading it back, please.</p> <p>17 (Record read as follows:</p> <p>Q. Did Ms. Turner ever tell you</p> <p>before Mino was launched that it would</p> <p>not infringe anyone's rights?)</p> <p>19</p> <p>20 THE WITNESS: Anyone's rights --</p> <p>21 MS. MAITRA: Sorry, same objection.</p> <p>22 THE WITNESS: Okay. Can you read the question</p> <p>23 again?</p> <p>24 (Record read as follows:</p> <p>Q. Did Ms. Turner ever tell you</p> <p>before Mino was launched that it would</p> <p>not infringe anyone's rights?)</p> <p>25</p> <p style="text-align: right;">339</p>	<p>1</p> <p>2 MS. MAITRA: Same objection.</p> <p>3 THE WITNESS: So again, I don't know</p> <p>4 specifically what she told me. It was a long time ago,</p> <p>5 and my understanding after we left was that we were in</p> <p>6 the clear legally and would not have reason to believe</p> <p>7 that we would be stepping on anyone's toes by making</p> <p>8 Mino, and that's the understanding I had.</p> <p>9 MS. SCHMITT: Q. But you don't recall -- but</p> <p>10 you don't recall ever showing her Mino, right --</p> <p>11 MS. MAITRA: Objection --</p> <p>12 MS. SCHMITT: Q. -- before it was launched?</p> <p>13 MS. MAITRA: Objection; asked and answered.</p> <p>14 THE WITNESS: I don't recall.</p> <p>15 MS. SCHMITT: Q. And who is Seth Schoen?</p> <p>16 A. I think Seth was a representative at the</p> <p>17 Electronic Frontier Foundation.</p> <p>18 Q. Is he a lawyer?</p> <p>19 A. I don't know if he's a lawyer.</p> <p>20 Q. I'm sorry, going back to Ms. Turner, did you</p> <p>21 ever discuss the Customs opinion with her?</p> <p>22 A. I don't recall.</p> <p>23 Q. And did you ever discuss the Customs opinion</p> <p>24 with Mr. Cook, Mr. Chapman, or anyone else at their</p> <p>25 firm?</p> <p style="text-align: right;">340</p>
11:44:59 11:45:06 11:45:08 11:45:06 11:45:08 11:45:16 11:45:19 11:45:45 11:45:47 11:45:52 11:45:00 11:45:08 11:45:08 11:45:26 11:45:28 11:45:38 11:45:26 11:45:40 11:45:47 11:45:52 11:45:52 11:45:53 11:45:55	<p>1 A. I don't recall.</p> <p>2 Q. Did you have an expectation that your</p> <p>3 communications with Ms. Turner would remain</p> <p>4 confidential?</p> <p>5 A. I believe I did. Again, I'm not really a</p> <p>6 lawyer, so I don't really know how these things work,</p> <p>7 but I knew that when we were speaking it was a private</p> <p>8 conversation about, you know, things that we were doing</p> <p>9 as a company, and I was going to her for some advice,</p> <p>10 and she was an attorney, yeah.</p> <p>11 Q. Okay, but you obviously think -- you didn't</p> <p>12 have an expectation that that conversation was</p> <p>13 privileged, right, you're talking about it now?</p> <p>14 A. My understanding of privilege is a little --</p> <p>15 Sonali has to debrief me on it, like, a lot. So it's</p> <p>16 still a little confusing to me. What do you mean by</p> <p>17 "privileged"?</p> <p>18 Q. Well, privileged information is -- I mean,</p> <p>19 I'm asking you whether you considered it to be</p> <p>20 privileged, whatever your meaning of that word is?</p> <p>21 MS. MAITRA: Objection; vague.</p> <p>22 THE WITNESS: I don't really know. I don't</p> <p>23 think I understand enough about a privileged</p> <p>24 communication. I do know that I had these conversations</p> <p>25 with her about intellectual property and video games,</p> <p style="text-align: right;">341</p>	<p>1 and our -- what our company was doing.</p> <p>2 MS. SCHMITT: Q. Did you -- did you have an</p> <p>3 expectation that conversations with Ms. Kasler would be</p> <p>4 confidential or privileged?</p> <p>5 A. Again --</p> <p>6 MS. MAITRA: Objection; compound; and vague.</p> <p>7 THE WITNESS: Can you repeat the question?</p> <p>8 MS. SCHMITT: Q. Do you have an expectation</p> <p>9 that your conversations with Ms. Kasler would be</p> <p>10 confidential?</p> <p>11 A. I don't really know what you mean by</p> <p>12 confidential.</p> <p>13 Q. You don't know what confidential means?</p> <p>14 A. I'm assuming it has some kind of legal</p> <p>15 connotation, which I'm not very familiar with.</p> <p>16 Q. Did you think Ms. Kasler was under an</p> <p>17 obligation legally not to disclose what you and she</p> <p>18 talked about?</p> <p>19 A. I'm not a lawyer. I don't really know the</p> <p>20 specifics of confidentiality in the legal realm. So I</p> <p>21 don't know.</p> <p>22 Q. I guess that wasn't part of the research you</p> <p>23 were doing back then?</p> <p>24 A. Is that -- the research that I was doing was</p> <p>25 related to intellectual property and video games.</p> <p style="text-align: right;">342</p>

Pages 339 to 342

Exhibit 10

**to the Declaration of Johanna Schmitt, Esq.
in Support of Plaintiffs' Opposition to
Defendant's Motion for Summary Judgment**

Ian Bogost

Confidential

5/6/2011

1

2 UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

3

4 TETRIS HOLDING, LLC, et al,)

)

5 Plaintiffs,)

)

6 - against -) Index No. 09-6115-FLW-DEA

)

7 XIO INTERACTIVE, INC.,)

)

8 Defendant.)

9)

10

11 May 6, 2011

10:00 a.m.

12 601 Lexington Avenue

New York, New York

13

14

15 CONFIDENTIAL

16

17 DEPOSITION OF DR. IAN BOGOST, held at

18 the above-mentioned time and place, before Randi

19 Friedman, a Registered Professional Reporter,

20 within and for the State of New York.

21

22

23

24

25

Ian Bogost

Confidential

5/6/2011

<p>1 Dr. I. Bogost(Confidential)</p> <p>2 A. Yes.</p> <p>3 Q. Do you consider it to be well thought</p> <p>4 out?</p> <p>5 A. How so?</p> <p>6 Q. Do you have any understanding of the</p> <p>7 term "well thought out"?</p> <p>8 A. I have some understanding of it.</p> <p>9 Q. What is that understanding?</p> <p>10 A. It could mean logically consistent; or</p> <p>11 it can mean esthetically appealing; or it could</p> <p>12 mean any number of things.</p> <p>13 Q. Okay. Do you consider Half-Real to be</p> <p>14 useful?</p> <p>15 MS. SCHMITT: Objection, vague.</p> <p>16 THE WITNESS: Useful for what</p> <p>17 purpose?</p> <p>18 BY MS. MAITRA:</p> <p>19 Q. Useful in the field of game studies.</p> <p>20 A. I suppose, although scholarship is not</p> <p>21 really used. It is -- it's an ongoing debate</p> <p>22 between a number of individuals. So usefulness</p> <p>23 is not necessarily the best characterization of</p> <p>24 its properties.</p> <p>25 Q. Is it smart?</p> <p style="text-align: right;">170</p>	<p>1 Dr. I. Bogost(Confidential)</p> <p>2 MS. SCHMITT: Sorry; what did you</p> <p>3 say?</p> <p>4 BY MS. MAITRA:</p> <p>5 Q. Is it smart?</p> <p>6 MS. SCHMITT: Objection, vague.</p> <p>7 THE WITNESS: It's a thoughtful</p> <p>8 book.</p> <p>9 BY MS. MAITRA:</p> <p>10 Q. Thank you.</p> <p>11 So I'd like to enter as Exhibit-12</p> <p>12 Mr. Begy's report which I believe you stated</p> <p>13 earlier that you read; correct?</p> <p>14 A. Correct.</p> <p>15 (Whereupon, Exhibit-12, Mr. Begy's</p> <p>16 report, was marked for identification.)</p> <p>17 BY MS. MAITRA:</p> <p>18 Q. Turn to Paragraph 16 of his report,</p> <p>19 please.</p> <p>20 Do you see the definition of rules as</p> <p>21 cited in Jesper Juul's work Half-Real? Do you</p> <p>22 see that definition there; specifically that</p> <p>23 "Rules specify limitations and affordances. They</p> <p>24 prohibit players from performing actions and this</p> <p>25 affords players meaningful actions that were not</p> <p style="text-align: right;">171</p>
<p>1 Dr. I. Bogost(Confidential)</p> <p>2 otherwise available. Rules give games structure.</p> <p>3 The board game needs rules that let the players</p> <p>4 move their pieces as well as preventing them from</p> <p>5 making illegal moves. The video game needs rules</p> <p>6 that let characters move, as well as rules that</p> <p>7 prevent the character from reaching the goal</p> <p>8 immediately."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. What, if anything, do you disagree</p> <p>12 with about this definition of rules?</p> <p>13 A. As I mentioned before, there are many</p> <p>14 ways of understanding rules. In fact, many have</p> <p>15 illusions of different understandings of rules.</p> <p>16 To me, this definition of rules sits at a level</p> <p>17 lower than my understanding of rules. This is a</p> <p>18 discussion of the way rules might be interpreted</p> <p>19 rather than rules themselves.</p> <p>20 Q. I see. So what do you mean when you</p> <p>21 say level lower?</p> <p>22 A. So if we're back to the idea of the</p> <p>23 idea of a game which is related to the rules, and</p> <p>24 then there is some system that interprets them,</p> <p>25 then these characterizations exist in that system</p> <p style="text-align: right;">172</p>	<p>1 Dr. I. Bogost(Confidential)</p> <p>2 that interprets them.</p> <p>3 Q. I'm still not quite understanding.</p> <p>4 Where is the notion of levels within</p> <p>5 that statement?</p> <p>6 A. If we move from a higher level of</p> <p>7 abstraction to a more concrete limitation, along</p> <p>8 that axis.</p> <p>9 Q. So at the top of that axis is</p> <p>10 abstraction. And at the bottom of that axis is</p> <p>11 concreteness?</p> <p>12 A. Or specificity perhaps.</p> <p>13 Q. Or specificity; is that right?</p> <p>14 A. Sure.</p> <p>15 Q. And your definition of rules is closer</p> <p>16 to -- closer to the higher level of that axis;</p> <p>17 i.e., abstraction, and Mr. Juul's definition of</p> <p>18 rules is closer to the bottom of that axis; i.e.,</p> <p>19 concreteness or specificity; is that right?</p> <p>20 MS. SCHMITT: Objection to form.</p> <p>21 THE WITNESS: Based on my</p> <p>22 interpretation, yes.</p> <p>23 BY MS. MAITRA:</p> <p>24 Q. Can you turn to Paragraph 39 of his</p> <p>25 report. That's Page 14. Mr. Begy says, "The</p> <p style="text-align: right;">173</p>

Pages 170 to 173

Exhibit 11

**to the Declaration of Johanna Schmitt, Esq.
in Support of Plaintiffs' Opposition to
Defendant's Motion for Summary Judgment**

Oxford English Reference Dictionary

Second Edition, Revised

Edited by
Judy Pearsall and Bill Trumble

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Rudolf, Lake | Rule 43

1262

fundamental. **2** incompletely developed; vestigial. ☐ **rudimentarily** *adv.* **rudimentariness** *n.*

Rudolf, Lake /'ru:dɒl/ the former name (until 1979) for Lake Turkana. (See **TURKANA, LAKE**.)

Rudra /'rʊdrə/ *Hinduism* **1** (in the Rig-veda) a Vedic minor god, associated with the storm, father of the Maruts. **2** one of the names of Siva.

Rudras see **MARUTS**.

rue¹ /ru:/ *v.* & *n.* ● *vtr.* (**rues, rued, rueing** or **ruing**) repent of; bitterly feel the consequences of; wish to be undone or non-existent (esp. *rue the day*). ● *n. archaic* **1** repentance; dejection at some occurrence. **2** compassion or pity. [OE *hrēow*, *hrēowan*]

rue² /ru:/ *n.* a perennial evergreen shrub, *Ruta graveolens*, with bitter strong-scented leaves formerly used in medicine. [ME *f.* OF *f.* *L. ruta f.* *Gk rhūtē*]

rueful /'ru:fʊl/ *adj.* expressing sorrow or regret, genuine or humorously affected. ☐ **ruefully** *adv.* **ruefulness** *n.* [ME, *f.* *RUE*]

rufescent /ru:'fes(ə)nt/ *adj.* Zool. etc. reddish. ☐ **rufescence** *n.* [*L. rufescere f. rufus reddish*]

ruff¹ /rʌf/ *n.* **1** a projecting starched frill worn round the neck esp. in the 16th century. **2** a projecting or conspicuously coloured ring of feathers or hair round a bird's or animal's neck. **3** a domestic pigeon like a jacobin. **4** (*fem. reeve* /ri:v/) a wading bird, *Philomachus pugnax*, of which the male has a ruff and ear-tufts in the breeding season. ☐ **rufflike** *adj.* [*perh. f. ruff = ROUGH*]

ruff² /rʌf/ *n.* **1** (*usu. ruffe*) a rough-scaled fish, esp. a perchlike freshwater fish, *Gymnocephalus cernua*, found in European lakes and rivers. **2** (in full **tommy ruff**) esp. *Austral.* a rough-scaled marine food fish, *Arripis georgianus*, common in Australian waters and related to the Australian salmon. Also called *roughy*. [ME, *prob. f. ROUGH*]

ruff³ /rʌf/ *v.* & *n.* ● *vintr.* & *tr.* trump at cards. ● *n.* an act of ruffing. [*orig. the name of a card-game: f. OF ruffle, rouffle, = It. ronfa* (*perh. alt. of trionfo TRUMP*)]

ruffe var. of **RUFF**² **1**.

ruffian /'rʌfɪən/ *n.* a violent lawless person. ☐ **ruffianism** *n.* **ruffianly** *adv.* [*f. ruffian f. It. ruffiano, perh. f. dial. rofia scurf*]

ruffle /'rʌf(ə)/ *v.* & *n.* ● *v. 1 tr.* disturb the smoothness or tranquillity of. **2 tr.** upset the calmness of (a person). **3 tr.** gather (lace etc.) into a ruffle. **4 tr.** (often foll. by *up*) (of a bird) erect (its feathers) in anger, display, etc. **5 intr.** undergo ruffling. **6 intr.** lose smoothness or calmness. ● *n. 1* an ornamental gathered or goffered frill of lace etc. worn at the opening of a garment esp. round the wrist, breast, or neck. **2** perturbation, bustle. **3** a rippling effect on water. **4** the ruff of a bird etc. (see **RUFF**¹ **2**). **5 Mil.** a vibrating drum-beat. [ME: *orig. unkn.*]

rufiyaa /ru:'fi:ja:/ *n.* (*pl. same*) the basic monetary unit of the Maldives, equal to 100 laris. [Maldivian]

rufous /'ru:fəs/ *adj.* (esp. of animals) reddish-brown. [*L. rufus red, reddish*]

rug /rʌg/ *n.* **1** a floor-mat of shaggy material or thick pile. **2** a thick woollen coverlet or wrap. ☐ **pull the rug from under** deprive of support; weaken, unsettle. [*prob. f. Scand.: cf. Norw. dial. rugga coverlet, Sw. rugg ruffled hair: rel. to RAG*]

Rugby /'rʌgbɪ/ a town in central England, on the River Avon in Warwickshire; pop. (1991) 61,106. Rugby School, where rugby football was developed in the early 19th century, was founded there in 1567.

rugby /'rʌgbɪ/ *n.* (also **Rugby**) (in full **rugby football**) a form of football, in which points are scored by carrying (and grounding) an oval-shaped ball across the opponents' goal-line (thereby scoring a try) or by kicking it between the two posts and over the crossbar of the opponents' goal. Named after Rugby School in Warwickshire where it was developed (in 1823 or later), it is played chiefly in the UK, France, Australia, and New Zealand. The ball may be carried or kicked forwards, but a thrown pass may be made only to the side or rear. The level of physical contact is high, especially when play is restarted with a scrum. (See also **RUGBY LEAGUE, RUGBY UNION**.)

Rugby League *n.* a professional form of rugby played with a team of thirteen. It dates from the breakaway from the Rugby Union of a group of northern English clubs (called the *Northern Union*) in 1895.

Rugby Union *n.* a form of rugby played with a team of fifteen. Originally strictly amateur, the game was opened to professionalism in 1995. The name is also given to the game's governing body, formed in 1871.

Rügen /'ru:gən/ an island in the Baltic Sea off the north coast of Germany, to which it is linked by a causeway. It forms part of the state of Mecklenburg-West Pomerania.

rugged /'rʌɡɪd/ *adj.* **1** (of ground or terrain) having a rough uneven surface. **2** (of features) strongly marked; irregular in outline. **3 a** unpolished; lacking gentleness or refinement (*rugged grandeur*). **b** harsh in sound. **c** austere, unbending (*rugged honesty*). **d** involving hardship (*a rugged life*). **4** (esp. of a machine) robust, sturdy. ☐ **ruggedly** *adv.* **ruggedness** *n.* [ME, *prob. f. Scand.: cf. RUG, and Sw. rugga, roughen*]

rugger /'rʌɡə(r)/ *n.* *Brit. colloq.* rugby.

rugosa /ru:'ɡəʊzə/ *n.* a Japanese rose, *Rosa rugosa*, which has dark green wrinkled leaves and deep pink flowers. [*L. fem. of rugosus* (see **RUGOSE**) used as specific epithet]

rugose /ru:'ɡəʊz-, -ɡəʊs/ *adj.* esp. *Biol.* wrinkled, corrugated. ☐ **rugosely** *adv.* **rugosity** /ru:'ɡɒsɪti/ *n.* [*L. rugosus f. ruga wrinkle*]

Ruhr /ruə(r)/ a region of coal mining and heavy industry in North Rhine-Westphalia, western Germany. It is named after the River Ruhr, which flows through it, meeting the Rhine near Duisburg. The Ruhr was occupied by French troops 1923–4, after Germany defaulted on war reparation payments.

ruin /ru:n/ *n.* & *v.* ● *n. 1* a destroyed or wrecked state (*after centuries of neglect, the palace fell to ruin*). **2 a** a person's or thing's downfall or elimination (*the ruin of my hopes*). **b archaic** a woman's loss of chastity by seduction or rape; dishonour resulting from this. **3 a** the complete loss of one's property or position (*bring to ruin*). **b** a person who has suffered ruin. **4** (*in sing. or pl.*) the remains of a building etc. that has suffered ruin (*an old ruin; ancient ruins*). **5** a cause of ruin; a destructive thing or influence (*will be the ruin of us*). ● *v. 1 tr.* **a** bring to ruin (*your extravagance has ruined me*). **b** utterly impair or wreck (*the rain ruined my hat*). **c archaic** seduce and abandon (a woman). **2 tr.** (esp. as **ruined** *adj.*) reduce to ruins. **3 intr. poet.** fall headlong or with a crash. ☐ **in ruins** **1** in a state of ruin. **2** completely wrecked (*their hopes were in ruins*). [ME *f.* OF *ruine f. L. ruina f. ruere fall*]

ruination /ru:'neɪʃ(ə)n/ *n.* **1** the act of bringing to ruin. **2** the act of ruining or the state of being ruined. [*obs. ruinate* (as **RUIN**)]

ruinous /'ru:mas/ *adj.* **1** bringing ruin; disastrous (*at ruinous expense*). **2** in ruins; dilapidated. ☐ **ruinously** *adv.* **ruinousness** *n.* [ME *f. L. ruinosus* (as **RUIN**)]

Ruisdael /'ri:zda:l, 'rɔ:z-, -deɪl/, Jacob van (also **Ruysdael**) (c.1628–82), Dutch landscape painter. Born in Haarlem, he painted the surrounding landscape from the mid-1640s until his move to Amsterdam in 1657, where he spent the rest of his life. His typical subject-matter was forest scenes, seascapes, and clouds, and his work demonstrated the possibilities of investing landscape with subtle intimations of mood. Meindert Hobbema was his most famous pupil, while among those influenced by his work were Thomas Gainsborough, John Constable, and the Barbizon School.

Ruiz de Alarcón y Mendoza /ru:'i:z dei 'ælɑ:kən i: men 'dɔ:zə/, Juan (1580–1639), Spanish dramatist, born in Mexico City. His most famous play, the moral comedy *La Verdad sospechosa*, was the basis of Corneille's *Le Menteur* (1642).

rule /ru:l/ *n.* & *v.* ● *n. 1* a principle to which an action conforms or is required to conform. **2** a prevailing custom or standard; the normal state of things. **3** government or dominion (*under British rule; the rule of law*). **4** a graduated straight measure used in carpentry etc.; a ruler. **5 Printing a** a thin strip of metal for separating headings, columns, etc. **b** a thin line or dash. **6** a code of discipline of a religious order. **7 Law** an order made by a judge or court with reference to a particular case only. **8 (Rules)** *Austral.* = **AUSTRALIAN RULES FOOTBALL**. ● *v. 1 tr.* exercise decisive influence over; keep under control. **2 tr.** & (often foll. by *over*) *intr.* have sovereign control of (*rules over a vast kingdom*). **3 tr.** (often foll. by *that* + clause) pronounce authoritatively (*was ruled out of order*). **4 tr. **a** make parallel lines across (paper). **b** make (a straight line) with a ruler etc. **5 intr.** (of prices or goods etc. in regard to price or quality etc.) have a specified general level; be for the most part (*the market ruled high*). **6 tr.** (*in passive; foll. by by*) consent to follow (advice etc.); be guided by. ☐ **as a rule** usually; more often than not. **by rule** in a regulation manner; mechanically. **rule of the road** see **ROAD**¹. **rule of three** *Math.* a method of finding a number in the same ratio to one given as exists between two others given. **rule of thumb** a rule for general guidance, based on experience or practice rather than theory. **rule out** exclude; pronounce irrelevant or ineligible. **rule the roost** (or **roast**) be in control. **run the rule over** examine cursorily for correctness or adequacy. ☐ **ruleless** *adj.* [ME *f.* OF *reule, reuler f. LL regulare f. L regula straight stick*]**

Rule 43 *n.* (in the UK) a prison regulation whereby offenders can be isolated or segregated for their own protection.

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EDITION



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Made in the United States of America

101112TT:QWV0807

L ruder-, rudus rubble (ca. 14th c.)
ational cover has been dis-
and roadsides)
ly introduced plant growing
rupted

m beginning, fr. *rudis* raw,
nt or a fundamental skill —
s of rational government
ed or undeveloped: **BEGIN-**
b (1): a body part so de-
unable to perform its nor-
to develop: **ANLAGE** — **ru-**

trè *adj* (1839) 1: consti-
d only a ~ formal education
<the equipment of these past
3: very imperfectly devel-
tail of a hyrax) — **ru-di-**
adv — **ru-di-men-tari-**

o OHG hriwa sorrow (bef.
t is laden — A. E. Housman)
tence, remorse, or regret for

1 (13c): a European strong-
olens of the family Rutaceae,
medicinally

vernal No. American herb
p family that has white flow-
e and basal leaves
or sympathy: **PITIALE** (~
hn Morley) 2: **MOURNFUL**,
uict — W. M. Thackeray —

rufescens, prp. of *rufescere* to
red] (1817): **REDDISH**
II freshwater European perch

(555)
in or
16th
ill of
n on
Eur-
those
large
affed

trick
card

masa
ts of
thers

ruff 1

uring breeding displays
a: a brutal person: **BULLY** —
n — **ru-fi-an-ly** *adj*
-lin] [ME *ruffelen*; akin to LG
IHEN, ABRADÉ b: **TRIOBLE**,
ce Anderson) 2: to erect (as
ough (as pages) b: **SHUFFLE**
e ruffled <their dispositions ~

2: a state or cause of irri-
tated on one edge b: **RUFF**
urface: **RIPPLE** — **ru-fly** *tr*

w vibrating drumbeat less loud

o. fr. Divehi (Indo-Aryan lan-
rupiyā, rūpiyā rupee) (1982)

el-ŪCLAF, the drug's Fr. man-
er] (1983): a drug C₂₀H₃₅NO₂
y in pregnancy by blocking the
o *mifepristone*

e at RED] (1782): **REDDISH**
cand origin; akin to Norw dial.
1: **LAP ROBE** 2: a piece of
pile and is used as a floor cov-
(a bearskin ~) 4 *slang*: **TOU-**
as a horse or dog)

[NL, fr. L. wrinkle — more at
ld or wrinkle (as of the gastric

ool, Rugby, England] (1864): a
us without time-outs or substi-
us are not permitted, and kick-
ing are featured

(14c) 1 *obs*: **SHAGGY**, **HAI-
GED** (~ mountains) 3: **TUR-**
seamed with wrinkles and fur-
h face b: showing facial signs
USTERE, STERN b: **COARSE**,
r 6a: presenting a severe test
rongly built or constituted: **RO-**
men — L. D. Stamp) *syn* see

-ness *n*
ng (1950): to strengthen (as a
stress, and abuse <a *ruggedized*
ja-zā-shān) *n*

i: **RUGBY**; also: a rugby player



ru-go-la \rū-gō-lə\ *n* [prob. fr. It dial.; akin to It dial. *ruga* arugula, It
nica — more at **ROCKET**] (1973): **ARUGULA**
ru-go-sa rose \rū-gō-sə-, -zə-\ *n* [NL *rugosa*, specific epithet of *Rosa*
rugosa rugose rose] (1892): any of various hardy thorny garden roses
descended from a rose (*Rosa rugosa*) introduced from China and Japan
— called also *rugosa*

ru-gose \rū-gōs\ *adj* [L *rugosus*, fr. *ruga*] (1676) 1: full of wrinkles
(~ cheeks) 2: having the veinlets sunken and the spaces between el-
evated (~ leaves of the sage) — **ru-gos-i-ty** \rū-gā-sə-tē\ *n*
rug rat *n* (1975) *slang*: a child not yet old enough for school
ru-gu-lose \rū-gyō-lōs\ *adj* [NL *rugula*, dim. of L *ruga*] (ca. 1819)
having small rugae: finely wrinkled

ru-in \rū-ən-, -in; rŭn\ *n* [ME *ruine*, fr. AF, fr. L *ruina*, fr. *ruere* to rush
headlong, fall, collapse] (12c) 1 *a* *archaic*: a falling down: **COLLAPSE**
(from age to age... the crash of ~ fitfully resounds — William Words-
worth) b: physical, moral, economic, or social collapse 2 *a*: the
state of being ruined — *archaic* except in pl. <the city lay in ~s> b:
the remains of something destroyed — *usu.* used in pl. <the ~s of an
ancient temple> <the ~s of his life> 3: a cause of destruction 4 *a*:
the action of destroying, laying waste, or wrecking b: **DAMAGE**, **IN-**
JURY 5: a ruined building, person, or object — **ru-in-ate** \rū-ə-nāt-,
-nāt\ *adj* — **ruinate** \rū-nāt\ *v*

ru-in *v* (1585) 1: to reduce to ruins: **DEVASTATE** 2 *a*: to damage ir-
reparably b: **BANKRUPT**, **IMPOVERISH** (~ed by stock speculation)
3: to subject to frustration, failure, or disaster <will ~ your chances
of promotion> ~ *vi*: to become ruined — **ru-in-er** *n*

ru-in-a-tion \rū-ə-nā-shən\ *n* (1664): **RUIN**, **DESTRUCTION**
ru-in-ous \rū-ə-nəs\ *adj* (14c) 1: **DILAPIDATED**, **RUINED** 2: causing
or tending to cause ruin — **ru-in-ous-ly** *adv* — **ru-in-ous-ness** *n*

ru-le \rū-l\ *n* [ME *rule*, fr. AF, fr. L *regula* straightedge, rule, fr. *regere*
to keep straight, direct — more at **RIGHT**] (13c) 1 *a*: a prescribed
guide for conduct or action b: the laws or regulations prescribed by
the founder of a religious order for observance by its members c: an
accepted procedure, custom, or habit d (1): a *usu.* written order or
direction made by a court regulating court practice or the action of
parties (2): a legal precept or doctrine e: a regulation or bylaw gov-
erning procedure or controlling conduct 2 *a* (1): a *usu.* valid general-
ization (2): a generally prevailing quality, state, or mode (fair weather
was the ~ yesterday — N.Y. Times) b: a standard of judgment
c: a regulating principle d: a determinate method for
performing a mathematical operation and obtaining a certain result 3
a: the exercise of authority or control: **DOMINION** b: a period dur-
ing which a specified ruler or government exercises control 4 *a*: a
strip of material marked off in units used esp. for measuring: **RULER** 3,
TAPE MEASURE b: a metal strip with a type-high face that prints a lin-
ear design; also: a linear design produced by or as if by such a strip
syn see **LAW** — as a *rule*: for the most part: **GENERALLY**

ru-le *vb* **ruled**; **ru-ling** *v* (13c) 1 *a*: to exert control, direction, or in-
fluence (on the passions that ~ our minds) b: to exercise control
over esp. by curbing or restraining (~ a fractious horse) <ruled his ap-
petites firmly> 2 *a*: to exercise authority or power over often harshly
or arbitrarily (the speaker *ruled* the legislature with an iron hand) b:
to be preeminent in: **DOMINATE** 3: to determine and declare au-
thoritatively; esp.: to command or determine judicially 4 *a* (1): to
mark with lines drawn along or as if along the straight edge of a ruler
(2): to mark (a line) on a paper with a ruler b: to arrange in a line ~
vi 1 *a*: to exercise supreme authority b: to be first in importance or
prominence: **PREDOMINATE** <the physical did not ~ in her nature
— Sherwood Anderson> 2: to exist in a specified state or condition
3: to lay down a legal rule 4 *slang*: to be extremely cool or popular
— used as a generalized term of praise or approval <for a little attitude
at the right price, sneakers ~ — Tish Hamilton> *syn* see **DECIDE**

ruled surface *n* (1862): a surface generated by a moving straight line
with the result that through every point on the surface a line can be
drawn lying wholly in the surface

ru-le-less \rū-ləs\ *adj* (15c): not restrained or regulated by law
rule of the road (1871): a customary practice (as driving always on a
particular side of the road or yielding the right of way) developed in the
interest of safety and often subsequently reinforced by law; esp.: any of
the rules making up a code governing ships in matters relating to mutu-
al safety

rule of thumb (1692) 1: a method of procedure based on experience
and common sense 2: a general principle regarded as roughly correct
but not intended to be scientifically accurate
rule out *v* (1869) 1: **EXCLUDE**, **ELIMINATE** 2: to make impossible
: **PREVENT** (heavy rain *ruled out* the picnic)

ru-ler \rū-lər\ *n* (14c) 1: one that rules; *specif*: **SOVEREIGN** 2: a
worker or a machine that rules paper 3: a smooth-edged strip (as of
wood or metal) that is *usu.* marked off in units (as inches) and is used
as a straightedge or for measuring — **ru-ler-ship** \-ship\ *n*

ru-ling *n* (15c): an official or authoritative decision, decree, statement,
or interpretation (as by a judge on a point of law)
ru-ling *adj* (1593) 1 *a*: exerting power or authority <the ~ party> b:
CHIEF, **PREDOMINATING** <a ~ passion> 2: generally prevailing
ru-ly \rū-lē\ *adj* [back-formation fr. *unruly*] (1837): **OBDIENT**, **ORDER-**
LY (< a crowd>)

rum \rəm\ *n* [prob. short for obs. *rumbullion* rum] (1654) 1: an alco-
holic beverage distilled from a fermented cane product (as molasses)
2: alcoholic liquor <the demon ~>

rum *adj* **rum-mer**; **rum-mest** [origin unknown] (1752) 1 *chiefly Brit*
: **QUEER**, **ODD** (<writing is a ~ trade — Angela Thirkell>) 2 *chiefly Brit*
: **DIFFICULT**, **DANGEROUS**

Rumanian *var* of **ROMANIAN**
rum-ba also **rum-ba** \rəm-bə-, -rŭm-, -rŭm-\ *n* [AmerSp] (1916): a
ballroom dance of Cuban origin in ¾ or ½ time with a basic pattern of
step-close-step and marked by a delayed transfer of weight and pro-
nounced hip movements; also: the music for this dance

rum-ble \rəm-bəl\ *vb* **rum-bled**; **rum-bling** \-b(ə)-lŭŋ\ [ME; akin to
MHG *rummeln* to rumble] *vi* (14c) 1: to make a low heavy rolling
sound (<thunder *rumbling* in the distance>) 2: to travel with a low re-
verberating sound (<wagons *rumbled* into town>) 3: to speak in a low
rolling tone 4: to engage in a rumble ~ *vt* 1: to utter or emit in a
low rolling voice 2 *Brit*: to reveal or discover the true character of —
rum-bler \-b(ə)-lər\ *n*

rumble *n* (14c) 1 *a*: a low heavy continuous reverberating often muf-
fled sound (as of thunder) b: low frequency noise in phonographic
playback caused by the transmission of mechanical vibrations by the
turntable to the pickup 2: a seat for servants behind the body of a
carriage 3 *a*: widespread expression of dissatisfaction or unrest b:
a street fight esp. among gangs

rumble seat *n* (1912): a folding seat in the back of an automobile (as a
coupe or roadster) not covered by the top
rumble strip *n* (1962): a strip of corrugated pavement (as along the
edge of a highway) that causes rumbling and vibration when driven
over

rumbling *n* (14c) 1: **RUMBLE** 2: general but unofficial talk or opin-
ion often of dissatisfaction — *usu.* used in pl. <~s of political trouble
— Anthony Burgess>

rum-bly \rəm-b(ə)-lē\ *adj* (1874): tending to rumble or rattle
rum-bus-tious \rəm-bəs-chəs\ *adj* [alter. of *robustious*] (1778) *chiefly*
Brit: **RAMBUNCTIOUS** — **rum-bus-tious-ly** *adv*, *chiefly Brit* — **rum-**
bus-tious-ness *n*, *chiefly Brit*

ru-men \rū-mən\ *n*, *pl* **ru-mi-na** \-mə-nə\ or **rumens** [NL *rumin-*,
rumen, fr. L] (ca. 1728): the large first compartment of the stomach of a
ruminant in which cellulose is broken down by the action of symbiotic
microorganisms — compare **ABOMASUM**, **OMASUM**, **RETICULUM** — **ru-**
mi-nal \-mə-nəl\ *adj*

ru-mi-nant \rū-mə-nənt\ *n* (1661): a ruminant mammal
ru-mi-nant *adj* (1691) 1 *a* (1): chewing the cud (2): characterized by
chewing again what has been swallowed b: of or relating to two sub-
orders (Ruminantia and Tylopoda) of herbivorous even-toed hoofed
mammals (as sheep, oxen, deer, and camels) that chew the cud and
have a complex 3- or 4-chambered stomach 2: given to or engaged in
contemplation: **MEDITATIVE** <stood there... in this attitude of ~ re-
lish — Thomas Wolfe> — **ru-mi-nant-ly** *adv*

ru-mi-nate \rū-mə-nāt\ *vb* **-nat-ed**; **-nat-ing** [L *ruminatus*, pp. of
ruminari to chew the cud, muse upon, fr. *rumin-*, *rumen* rumen; perh.
akin to Skt *romantha* act of chewing the cud] *vt* (1533) 1: to go over
in the mind repeatedly and often casually or slowly 2: to chew re-
peatedly for an extended period ~ *vi* 1: to chew again what has been
chewed slightly and swallowed: chew the cud 2: to engage in con-
templation: **REFLECT** *syn* see **PONDER** — **ru-mi-na-tion** \rū-mā-
nā-shən\ *n* — **ru-mi-na-tive** \rū-mə-nā-tiv\ *adj* — **ru-mi-na-tive-ly**
adv — **ru-mi-na-tor** \-nā-tər\ *n*

rum-mage \rə-mij\ *vb* **rum-maged**; **rum-mag-ing** \rŭmmage\ *vi*
(1582) 1: to make a thorough search or investigation 2: to engage
in an undirected or haphazard search ~ *vt* 1: to make a thorough
search through: **RANSACK** <*rummaged* the attic> 2: to examine mi-
nutely and completely 3: to discover by searching — **rum-mag-er** *n*

rummage *n* [obs. E *romage* act of stowing cargo, modif. of MF *arrimage*,
fr. *arrimer* to stow, fr. *a-* (fr. L *ad-*) + *rimen*, fr. ME *rimen* to open
up, make room for, fr. OE *ryman* — more at **REAM**] (1598) 1 *a*: a
confused miscellaneous collection b: items for sale at a rummage
sale 2: a thorough search esp. among a confusion of objects

rummage sale *n* (ca. 1858): a *usu.* informal sale of miscellaneous
goods; esp.: a sale of donated articles conducted by a nonprofit organi-
zation (as a church or charity) to help support its programs
rum-mer \rə-mər\ *n* [G or D; G *Römer*, fr. D *roemer*] (1654): a large-
bowed footed drinking glass often elaborately etched or engraved

rum-my \rə-mē\ *adj* **rum-mi-er**; **-est** \rŭm\ (1828): **QUEER**, **ODD**
<feeling a little ~ from our trip up the escalator — New Yorker>

rummy *n*, *pl* **rummies** \rŭm\ (1851): **DRUNKARD**
rummy *n* (perh. fr. *rummy*) (1915): any of several card games for two
or more players in which each player tries to assemble groups of three
or more cards of the same rank or suit and to be the first to meld them
all

ru-mor \rū-mər\ *n* [ME *rumour*, fr. AF, fr. L *rumor* clamor, gossip;
akin to OE *rēon* to lament, Skt *rauti* he roars] (14c) 1: talk or opinion
widely disseminated with no discernible source 2: a statement or re-
port current without known authority for its truth 3 *archaic*: talk or
report of a notable person or event 4: a soft low indistinct sound
: **MURMUR**

rumor *vb* **ru-mored**; **ru-mor-ing** (1594): to tell or spread by rumor
ru-mor-mon-ger \-məŋ-gər-, -māŋ-\ *n* (1884): a person who spreads
rumors — **ru-mor-mon-ger-ing** \-gər-ŭŋ\ *n*

ru-mour \rū-mər\ *chiefly Brit var* of **RUMOR**
rump \rŭmp\ *n* [ME, of Scand origin; akin to Dan *rumpe* rump; akin to
MHG *rumph* torso] (15c) 1 *a*: the upper rounded part of the hind-
quarters of a quadruped mammal b: **BUTTOCKS** c: the sacral or
dorsal part of the posterior end of a bird 2: a cut of meat (as beef)
between the loin and round — see **BEEF** illustration 3: a small or inferi-
or remnant or offshoot; esp.: a group (as a parliament) carrying on in
the name of the original body after the departure or expulsion of a
large number of its members

rum-ple \rəm-pəl\ *n* (ca. 1520): **FOLD**, **WRINKLE**
rumple *vb* **rum-pled**; **rum-pling** \-p(ə)-lŭŋ\ [D *rompelen*; akin to OHG
rimpfan to wrinkle] *vt* (1603) 1: **WRINKLE**, **CRUMPLE** 2: to make
unkempt: **TOUSLE** ~ *vi*: to become rumpled

rum-ply \rəm-p(ə)-lē\ *adj* **rum-pli-er**; **-est** (1833): having rumples
rum-pus \rəm-pəs\ *n* [origin unknown] (1764): a *usu.* noisy commo-
tion

rumpus room *n* (1939): a room *usu.* in the basement of a home that is
used for games, parties, and recreation
rum-run-ner \rəm-rŭn-ər\ *n* (1920): a person or ship engaged in
bringing prohibited liquor ashore or across a border — **rum-run-ning**
\-rŭn-ŭŋ\ *adj* or *n*

run \rən\ *vb* **ran** \rən\ also *chiefly dial* **run**; **run**; **run-ning** [ME *ron-*
nen, alter. of *rinnen*, *v.i.* (fr. OE *riennan*, *rinnan* & ON *rinna*) & of *ren-*
nen, *v.t.*, fr. ON *renna*; akin to OHG *rinnan*, *v.i.*, to run, Skt *ṛināti* he
causes to flow, and prob. to L *rinus* stream] *vi* (bef. 12c) 1 *a*: to go
faster than a walk; *specif*: to go steadily by springing steps so that both

to abut to kitten, F table to further to ash to ace to mop, mar

to out to chin to bet to easy to go to hit to ice to job

to sing to go to law to boy to thin to the to loot to foot

to yet to vision, beige to, ce, ue, see Guide to Pronunciation

Exhibit 12

**to the Declaration of Johanna Schmitt, Esq.
in Support of Plaintiffs' Opposition to
Defendant's Motion for Summary Judgment**

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEW JERSEY

4 _____
5 TETRIS HOLDING, LLC and THE TETRIS
6 COMPANY, LLC,

7
8 Plaintiffs,

9
10 -against-

11 XIO INTERACTIVE INC.,

12 Defendant.

13
14 Civil Action No. 3:09-cv-6115 (FLW) (DEA)

15
16 _____
17 January 11, 2011
18 10:19 a.m.

19
20 HIGHLY CONFIDENTIAL DEPOSITION
21 of HENK ROGERS, taken by Defendant,
22 pursuant to Notice, held at the offices of
23 KIRKLAND & ELLIS, LLP, 601 Lexington
24 Avenue, New York, New York before Wayne
25 Hock, a Notary Public of the State of New
York.

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<p style="text-align: right;">54</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 A. The game would not be identical 11:28:17</p> <p>3 if you changed it. 11:28:25</p> <p>4 Q. So my question was whether it 11:28:26</p> <p>5 would change the way a player played the 11:28:29</p> <p>6 game. 11:28:31</p> <p>7 MS. CENDALI: Objection to form. 11:28:32</p> <p>8 A. It depends on how much you 11:28:33</p> <p>9 changed it. 11:28:43</p> <p>10 Q. Okay. 11:28:43</p> <p>11 So let me give you a specific. 11:28:44</p> <p>12 Let's say the long vertical 11:28:46</p> <p>13 rectangle playing field or matrix which is 11:28:49</p> <p>14 higher than wide had the dimensions ten by 11:28:54</p> <p>15 twenty, let's say that I changed it to ten 11:28:57</p> <p>16 by ten. 11:29:00</p> <p>17 Would that change the way a 11:29:00</p> <p>18 player played that game? 11:29:02</p> <p>19 MS. CENDALI: Objection to form. 11:29:04</p> <p>20 A. No. 11:29:05</p> <p>21 Q. It would not? 11:29:07</p> <p>22 A. No. It would -- no. 11:29:08</p> <p>23 Q. It would not change the way a 11:29:11</p> <p>24 player played in any way? 11:29:13</p> <p>25 MS. CENDALI: Asked and answered. 11:29:15</p>	<p style="text-align: right;">56</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 movements. They wouldn't have the same 11:30:17</p> <p>3 amount of space to complete them in. 11:30:19</p> <p>4 Q. And how would that different 11:30:21</p> <p>5 amount of space to complete them in change 11:30:25</p> <p>6 the game? 11:30:27</p> <p>7 MS. CENDALI: Objection. Assumes 11:30:29</p> <p>8 facts not in evidence. Misstates his 11:30:30</p> <p>9 testimony. Form. 11:30:33</p> <p>10 A. I don't know. If you were to 11:30:33</p> <p>11 play soccer on a smaller soccer field, 11:30:41</p> <p>12 would it still be soccer? 11:30:45</p> <p>13 Q. I'm not asking whether it would 11:30:47</p> <p>14 still be Tetris. I'm asking whether it 11:30:49</p> <p>15 would change the way a player played the 11:30:51</p> <p>16 game. So for example, in your soccer 11:30:55</p> <p>17 analogy, I'm not asking whether it would 11:30:58</p> <p>18 still be soccer, I'm asking whether a 11:31:03</p> <p>19 smaller playing field would affect the way 11:31:05</p> <p>20 the player played the game. 11:31:08</p> <p>21 MS. CENDALI: Objection. Asked 11:31:10</p> <p>22 and answered. 11:31:12</p> <p>23 A. Very slightly. 11:31:12</p> <p>24 Q. Okay. 11:31:14</p> <p>25 So in what way? 11:31:15</p>
<p style="text-align: right;">55</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 A. Asked and answered. 11:29:18</p> <p>3 Q. Okay. 11:29:21</p> <p>4 Let's say that I changed the ten 11:29:21</p> <p>5 -- the ten by twenty matrix to nine by 11:29:27</p> <p>6 twenty, to a nine by twenty matrix. 11:29:32</p> <p>7 Would that change the way a 11:29:39</p> <p>8 player played the game? 11:29:39</p> <p>9 MS. CENDALI: Objection to form. 11:29:40</p> <p>10 Objection. Asked and answered. 11:29:41</p> <p>11 A. No. 11:29:43</p> <p>12 Q. And why not? 11:29:43</p> <p>13 A. Because a player -- the basic 11:29:48</p> <p>14 activity would still be the same. An 11:29:51</p> <p>15 object would appear at the top of the 11:29:51</p> <p>16 screen or somewhere near the play field. 11:29:53</p> <p>17 A player would manipulate it and it would 11:29:53</p> <p>18 set down. A player would be trying to 11:29:57</p> <p>19 create shapes of some type and they would 11:30:00</p> <p>20 be removed from the playing field. 11:30:03</p> <p>21 Q. Would the player have all the 11:30:05</p> <p>22 same movements in the first game with the 11:30:07</p> <p>23 ten by twenty matrix as the second game 11:30:09</p> <p>24 with the ten by ten matrix? 11:30:13</p> <p>25 A. They would have all the same 11:30:15</p>	<p style="text-align: right;">57</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 A. They would have less room to 11:31:17</p> <p>3 play the game in. 11:31:19</p> <p>4 Q. Okay. 11:31:20</p> <p>5 So does that mean that the 11:31:21</p> <p>6 player would make different movements on 11:31:23</p> <p>7 the playing field? 11:31:26</p> <p>8 MS. CENDALI: Objection. 11:31:27</p> <p>9 Speculation. 11:31:29</p> <p>10 You can answer. 11:31:31</p> <p>11 A. I don't think so. 11:31:31</p> <p>12 Q. Okay. 11:31:34</p> <p>13 Would the game end sooner if the 11:31:34</p> <p>14 playing field were ten by ten versus ten 11:31:38</p> <p>15 by twenty and the player had all the same 11:31:41</p> <p>16 movements? 11:31:43</p> <p>17 MS. CENDALI: Objection. 11:31:44</p> <p>18 A. It depends on which variant of 11:31:46</p> <p>19 Tetris we're talking about. There are 11:31:49</p> <p>20 many variants of Tetris. Some it would 11:31:51</p> <p>21 affect and some it wouldn't affect. 11:31:55</p> <p>22 Q. Okay. 11:31:57</p> <p>23 In which cases would it affect? 11:31:57</p> <p>24 A. If you were to make the analogy 11:32:00</p> <p>25 of soccer and shrink the soccer field to 11:32:03</p>

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<p style="text-align: right;">58</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 two meters by two meters, it would be 11:32:07</p> <p>3 unplayable. So if you shrank the play 11:32:10</p> <p>4 field down to tiny, tiny size, it would no 11:32:13</p> <p>5 longer fit. So it you were to change it 11:32:16</p> <p>6 from twenty by ten to ten by ten, there 11:32:18</p> <p>7 would be a slight difference in the way 11:32:22</p> <p>8 the game is played. 11:32:22</p> <p>9 Q. I'm asking what that difference 11:32:24</p> <p>10 would be. 11:32:25</p> <p>11 A. The player would have less time 11:32:26</p> <p>12 to complete his task in or get a lower 11:32:28</p> <p>13 score. 11:32:30</p> <p>14 Q. I see. 11:32:31</p> <p>15 And what about the nine by 11:32:31</p> <p>16 twenty playing field versus the ten by 11:32:37</p> <p>17 twenty playing field? 11:32:40</p> <p>18 MS. CENDALI: Objection to form. 11:32:41</p> <p>19 Objection. Asked and answered. 11:32:42</p> <p>20 A. It's -- again, it's the same 11:32:43</p> <p>21 game but it just looks and feels 11:32:49</p> <p>22 different. 11:32:53</p> <p>23 Q. Okay. 11:32:53</p> <p>24 And how exactly does it look and 11:32:54</p> <p>25 feel different? 11:32:58</p>	<p style="text-align: right;">60</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 adjust. But if you didn't have another 11:33:49</p> <p>3 way to play it then it would mean no 11:33:52</p> <p>4 difference. In other words, the activity 11:33:55</p> <p>5 is the same. 11:33:57</p> <p>6 Q. Okay. 11:33:59</p> <p>7 So I'm not asking whether the 11:34:00</p> <p>8 activity is the same or whether the game 11:34:02</p> <p>9 would be the same. I'm asking you whether 11:34:05</p> <p>10 changing the dimensions of the playing 11:34:07</p> <p>11 field from ten by twenty to nine by twenty 11:34:10</p> <p>12 would change the way the player played the 11:34:15</p> <p>13 game. 11:34:20</p> <p>14 MS. CENDALI: Asked and answered. 11:34:21</p> <p>15 A. Slightly. 11:34:21</p> <p>16 Q. Okay. 11:34:22</p> <p>17 And exactly how? 11:34:22</p> <p>18 MS. CENDALI: Asked and answered. 11:34:26</p> <p>19 A. Exactly how? When you move the 11:34:26</p> <p>20 piece from one side to the other side, 11:34:32</p> <p>21 you'd have one less button press to reach 11:34:34</p> <p>22 the other side. 11:34:39</p> <p>23 Q. So there would be fewer buttons 11:34:39</p> <p>24 that the player would press; is that fair? 11:34:42</p> <p>25 A. To get from one side to the 11:34:45</p>
<p style="text-align: right;">59</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 MS. CENDALI: Objection. 11:32:58</p> <p>3 Incomplete hypothetical. Objection to 11:32:59</p> <p>4 form. 11:33:01</p> <p>5 A. You have nine columns instead of 11:33:01</p> <p>6 ten columns to put your pieces in. 11:33:05</p> <p>7 Q. Does that make the game more 11:33:07</p> <p>8 difficult? 11:33:11</p> <p>9 MS. CENDALI: Objection to form. 11:33:15</p> <p>10 Incomplete hypothetical. 11:33:17</p> <p>11 A. No, it's just different. 11:33:18</p> <p>12 Q. Okay. 11:33:20</p> <p>13 So just different. 11:33:20</p> <p>14 Does it make it easier? 11:33:21</p> <p>15 A. No, just different. 11:33:24</p> <p>16 Q. Okay. 11:33:31</p> <p>17 And again, exactly how does it 11:33:31</p> <p>18 make it different? 11:33:33</p> <p>19 MS. CENDALI: Objection to form. 11:33:35</p> <p>20 Q. So let's wait for her to enter 11:33:35</p> <p>21 objections and then you can answer. 11:33:38</p> <p>22 MS. CENDALI: Objection to form. 11:33:39</p> <p>23 A. Yeah, so basically if you're 11:33:40</p> <p>24 used to playing it one way and then you're 11:33:44</p> <p>25 playing it a different way, you have to 11:33:48</p>	<p style="text-align: right;">61</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 other side, yes. But it would be more -- 11:34:47</p> <p>3 it would be different because there would 11:34:52</p> <p>4 be no place to put your piece on the other 11:34:59</p> <p>5 side. 11:35:01</p> <p>6 Q. So the next element, the seven 11:35:01</p> <p>7 geometric playing pieces formed by four 11:35:06</p> <p>8 equally sized blocks joined at the sides. 11:35:09</p> <p>9 Let's say that I changed -- and 11:35:12</p> <p>10 we're talking about tetrominoes here; 11:35:18</p> <p>11 correct? 11:35:21</p> <p>12 MS. CENDALI: Objection to form. 11:35:22</p> <p>13 A. Seven -- the seven tetrominoes 11:35:23</p> <p>14 instead of tetrominoes, because there was 11:35:33</p> <p>15 only five tetrominoes and there's seven 11:35:33</p> <p>16 tetriminoes. Okay. 11:35:37</p> <p>17 So what's your question? 11:35:38</p> <p>18 Q. No, my question, I think you 11:35:40</p> <p>19 answered it, which is basically this is 11:35:43</p> <p>20 referring to tetrominoes with an I? 11:35:45</p> <p>21 A. Yes. 11:35:49</p> <p>22 Q. What if I changed that to 11:35:56</p> <p>23 dominos meaning a two-squared shape, would 11:35:56</p> <p>24 that change the way a player played the 11:35:56</p> <p>25 game? 11:35:58</p>

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<p style="text-align: right;">62</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 MS. CENDALI: Objection to form. 11:35:58</p> <p>3 Objection. Incomplete hypothetical. 11:36:00</p> <p>4 A. Are you asking whether it still 11:36:02</p> <p>5 would be Tetris? 11:36:06</p> <p>6 Q. No, I'm asking you whether it 11:36:07</p> <p>7 would change the way the player played the 11:36:09</p> <p>8 game. I'm not asking you whether the name 11:36:12</p> <p>9 of the game would be different or the idea 11:36:15</p> <p>10 of the game would be different. 11:36:17</p> <p>11 A. No. 11:36:19</p> <p>12 Q. Okay. 11:36:20</p> <p>13 So let me be clear on what 11:36:20</p> <p>14 question you're answering. 11:36:24</p> <p>15 If I were to change the 11:36:25</p> <p>16 tetriminoes with an I to dominos, would 11:36:28</p> <p>17 that change gameplay? 11:36:33</p> <p>18 MS. CENDALI: Objection. Asked 11:36:35</p> <p>19 and answered. 11:36:37</p> <p>20 A. No. 11:36:38</p> <p>21 Q. Why not? 11:36:40</p> <p>22 A. Your objectives of the game is 11:36:45</p> <p>23 identical. You're still trying to create 11:36:48</p> <p>24 the same shapes, you have shapes that 11:36:50</p> <p>25 appear in the play field, you manipulate 11:36:53</p>	<p style="text-align: right;">64</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 Q. Right. 11:37:50</p> <p>3 So how about let's move to the 11:37:51</p> <p>4 appearance of the playing pieces at the 11:38:00</p> <p>5 top of the matrix. 11:38:04</p> <p>6 Let's say that the playing 11:38:05</p> <p>7 pieces appeared close to the bottom of the 11:38:07</p> <p>8 matrix instead of the top of the matrix. 11:38:10</p> <p>9 How would that affect gameplay? 11:38:13</p> <p>10 MS. CENDALI: Objection. Assumes 11:38:15</p> <p>11 facts not in evidence. 11:38:17</p> <p>12 A. It wouldn't. I don't think it 11:38:18</p> <p>13 would. 11:38:19</p> <p>14 Q. Would it provide the player less 11:38:20</p> <p>15 time in which to place the piece on the 11:38:23</p> <p>16 board? 11:38:25</p> <p>17 A. Well, you're saying they appear 11:38:26</p> <p>18 at the bottom of the screen. 11:38:30</p> <p>19 Q. Or the middle. 11:38:31</p> <p>20 A. Or the middle? 11:38:32</p> <p>21 Q. Yes. 11:38:34</p> <p>22 A. It depends which way the piece 11:38:34</p> <p>23 moved afterwards. 11:38:37</p> <p>24 Q. Okay. 11:38:38</p> <p>25 But would it allow fewer cells 11:38:38</p>
<p style="text-align: right;">63</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 them, and they are used to form shapes in 11:36:57</p> <p>3 the play field that are removed from the 11:36:59</p> <p>4 game. And so that's essentially the game, 11:37:02</p> <p>5 the way the game is played. 11:37:04</p> <p>6 Q. I see. 11:37:07</p> <p>7 So might it change how quickly 11:37:08</p> <p>8 the lines cleared on the playing field? 11:37:11</p> <p>9 MS. CENDALI: Objection to form. 11:37:13</p> <p>10 Speculation. 11:37:16</p> <p>11 You can answer. 11:37:16</p> <p>12 A. Quickly meaning how much time it 11:37:17</p> <p>13 takes to clear a line? 11:37:21</p> <p>14 Q. Yes. 11:37:22</p> <p>15 A. So to speak? 11:37:23</p> <p>16 Q. Yes. 11:37:25</p> <p>17 A. It might. 11:37:25</p> <p>18 Q. Why might it? 11:37:26</p> <p>19 A. Because the pieces are shaped 11:37:28</p> <p>20 different and a player might have I'm 11:37:33</p> <p>21 going to say no prior experience with 11:37:35</p> <p>22 those shapes. No, I think it would be 11:37:38</p> <p>23 about the same. If you were to ask me to 11:37:42</p> <p>24 design that game, I would design that game 11:37:46</p> <p>25 and it would work. 11:37:49</p>	<p style="text-align: right;">65</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 in which for the player -- in which the 11:38:42</p> <p>3 player could move to place a piece on the 11:38:46</p> <p>4 board? 11:38:49</p> <p>5 MS. CENDALI: Objection. 11:38:49</p> <p>6 Speculation. Incomplete hypothetical. 11:38:50</p> <p>7 A. Again, if you ask me to design a 11:38:51</p> <p>8 game where the piece started there -- 11:38:55</p> <p>9 Q. That's not what I'm asking. 11:38:57</p> <p>10 MS. MAITRA: So could you repeat 11:39:00</p> <p>11 the question. 11:39:03</p> <p>12 (Whereupon the requested portion 11:39:03</p> <p>13 was read back by the reporter) 11:39:20</p> <p>14 MS. CENDALI: Objection to form. 11:39:20</p> <p>15 A. Yeah, I would have to see the 11:39:22</p> <p>16 game. 11:39:24</p> <p>17 Q. So you wouldn't know unless you 11:39:24</p> <p>18 actually saw it? 11:39:26</p> <p>19 A. Yeah. 11:39:27</p> <p>20 Q. Okay. 11:39:27</p> <p>21 Let me give you a hypothetical 11:39:36</p> <p>22 that I thought up the other day. 11:39:37</p> <p>23 Picture a Tetris championship or 11:39:40</p> <p>24 a Tetris Olympics, if you will, and say 11:39:43</p> <p>25 two players were playing each other in 11:39:47</p>

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<p style="text-align: right;">66</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 this championship. And say that one 11:39:49</p> <p>3 player had a ten by ten matrix in which to 11:39:53</p> <p>4 play the game and another player had a ten 11:39:58</p> <p>5 by ten matrix. In all other respects the 11:40:03</p> <p>6 games are identical except for that one 11:40:08</p> <p>7 element. 11:40:11</p> <p>8 Would one of the players say no 11:40:16</p> <p>9 fair? 11:40:19</p> <p>10 MS. CENDALI: Objection to form. 11:40:20</p> <p>11 Objection. Incomplete hypothetical. 11:40:23</p> <p>12 You can answer. 11:40:25</p> <p>13 A. I would have to see the game. I 11:40:25</p> <p>14 would have to see that Olympic -- 11:40:28</p> <p>15 Q. So you couldn't tell me one way 11:40:31</p> <p>16 or the other whether changing the game in 11:40:33</p> <p>17 that respect at the Tetris Olympics and 11:40:37</p> <p>18 only that respect would be fair? 11:40:43</p> <p>19 A. I can imagine but I wouldn't 11:40:44</p> <p>20 know for sure. 11:40:47</p> <p>21 Q. What would be your best guess? 11:40:48</p> <p>22 MS. CENDALI: Objection. The 11:40:49</p> <p>23 witness should not guess. 11:40:55</p> <p>24 A. So you want me to guess? 11:40:57</p> <p>25 Q. Yes. 11:40:58</p>	<p style="text-align: right;">68</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. 11:42:08</p> <p>3 Would -- so let me give you a 11:42:08</p> <p>4 definition of gameplay and then you can 11:42:12</p> <p>5 use that definition. 11:42:15</p> <p>6 Let's say gameplay means 11:42:16</p> <p>7 changing the moves that a player would 11:42:19</p> <p>8 make. 11:42:24</p> <p>9 Okay? 11:42:26</p> <p>10 So under that definition of 11:42:28</p> <p>11 gameplay, would it change gameplay if the 11:42:31</p> <p>12 pieces couldn't rotate and all else was 11:42:39</p> <p>13 the same? 11:42:39</p> <p>14 MS. CENDALI: I object to your 11:42:40</p> <p>15 definition. Objection to form. 11:42:42</p> <p>16 A. When you say change gameplay, 11:42:44</p> <p>17 are you asking whether it would be any 11:42:48</p> <p>18 less fun or more fun to play? 11:42:51</p> <p>19 Q. No, not my question. 11:42:53</p> <p>20 A. Or -- can you repeat the 11:42:55</p> <p>21 question? 11:43:08</p> <p>22 MS. MAITRA: Could you repeat it, 11:43:09</p> <p>23 please? Read it back. 11:43:11</p> <p>24 (Whereupon the requested portion 11:43:12</p> <p>25 was read back by the reporter) 11:43:35</p>
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<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 A. Under your definition? 11:44:30</p> <p>3 Could we be specific like are 11:44:32</p> <p>4 you talking about which buttons get 11:44:35</p> <p>5 pressed? 11:44:37</p> <p>6 Q. Sure. Yes. 11:44:38</p> <p>7 A. Would it change which buttons 11:44:39</p> <p>8 get pressed? 11:44:42</p> <p>9 Q. Yes. 11:44:42</p> <p>10 MS. CENDALI: Objection to form. 11:44:43</p> <p>11 A. Yes, it would change which 11:44:44</p> <p>12 buttons get pressed. 11:44:51</p> <p>13 Q. Would it make it easier if there 11:44:53</p> <p>14 were no garbage lines? 11:44:55</p> <p>15 MS. CENDALI: Asked and answered. 11:44:58</p> <p>16 A. Easier? No. 11:44:59</p> <p>17 Q. Do garbage lines in general make 11:45:05</p> <p>18 gameplay more difficult? 11:45:08</p> <p>19 A. No. 11:45:10</p> <p>20 Q. Why not? 11:45:10</p> <p>21 A. Sometimes they help and 11:45:12</p> <p>22 sometimes they hinder. It depends on what 11:45:15</p> <p>23 your immediate objective in the game is. 11:45:19</p> <p>24 Q. Okay. 11:45:22</p> <p>25 A. It might be a way for you to get 11:45:22</p>	<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 let's say that element was changed, let's 11:46:25</p> <p>3 say there was no ghost or shadow piece 11:46:29</p> <p>4 under the playing piece, would it be 11:46:32</p> <p>5 easier to play the game without a ghost or 11:46:34</p> <p>6 a shadow piece? 11:46:37</p> <p>7 MS. CENDALI: Objection to form. 11:46:38</p> <p>8 Objection. Hypothetical. 11:46:39</p> <p>9 A. It's really subjective. It's up 11:46:40</p> <p>10 to the player. Some players like it, some 11:46:43</p> <p>11 players don't. 11:46:46</p> <p>12 Q. Why do some players like it? 11:46:47</p> <p>13 A. Because it sort of lines up the 11:46:49</p> <p>14 piece where it's going to fall. 11:46:55</p> <p>15 Q. So why would they like that? 11:46:57</p> <p>16 A. So they wouldn't make a mistake 11:47:00</p> <p>17 and land in the wrong spot. 11:47:03</p> <p>18 Q. Why would some players not like 11:47:06</p> <p>19 it? 11:47:08</p> <p>20 A. Because they're confused between 11:47:08</p> <p>21 the piece that's the ghost piece and the 11:47:11</p> <p>22 piece that's floating and there's two 11:47:13</p> <p>23 pieces that they're manipulating and so 11:47:14</p> <p>24 they are confused. 11:47:15</p> <p>25 Q. In Tetris, is there a way to 11:47:16</p>
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<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 quicker to your objective of some shape 11:45:25</p> <p>3 than not. 11:45:29</p> <p>4 Q. So let's be specific. 11:45:30</p> <p>5 Let's say that the garbage lines 11:45:32</p> <p>6 were not shaped in a well, for example. 11:45:34</p> <p>7 Let's say that the garbage lines had the 11:45:40</p> <p>8 missing square in different places at 11:45:43</p> <p>9 different cells. 11:45:49</p> <p>10 Okay? 11:45:53</p> <p>11 MS. CENDALI: Objection to form. 11:45:53</p> <p>12 Objection. Vague. 11:45:55</p> <p>13 A. Maybe you could draw it for me. 11:45:56</p> <p>14 Q. I do have some examples. I'll 11:45:59</p> <p>15 get to that in a minute. 11:46:02</p> <p>16 But you would have no real way 11:46:03</p> <p>17 of knowing whether garbage lines make it 11:46:06</p> <p>18 easier or difficult without actually 11:46:09</p> <p>19 seeing a version of the game? 11:46:12</p> <p>20 A. Without actually playing -- 11:46:13</p> <p>21 Q. Actually playing it? 11:46:14</p> <p>22 A. Yeah. 11:46:16</p> <p>23 Q. Okay. All right. 11:46:17</p> <p>24 The appearance of a ghost or 11:46:19</p> <p>25 shadow piece under the playing piece, 11:46:22</p>	<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 differentiate the shadow piece from the 11:47:19</p> <p>3 actual piece? 11:47:22</p> <p>4 A. Yeah, there's a visual 11:47:23</p> <p>5 difference. 11:47:26</p> <p>6 Q. And that visual difference 11:47:26</p> <p>7 allows a player to differentiate the 11:47:29</p> <p>8 shadow piece from the actual piece? 11:47:32</p> <p>9 A. Yeah, except that not everybody 11:47:34</p> <p>10 thinks that way. 11:47:37</p> <p>11 Q. But the purpose of making it 11:47:37</p> <p>12 different from the actual piece is to help 11:47:41</p> <p>13 differentiate it; right? 11:47:45</p> <p>14 A. Yes. 11:47:47</p> <p>15 Q. The change in color of playing 11:47:48</p> <p>16 pieces when they're in lockdown mode, why 11:47:56</p> <p>17 change the color of the playing pieces 11:47:59</p> <p>18 when they're in lockdown mode? 11:48:03</p> <p>19 A. To make them, the actual piece 11:48:05</p> <p>20 that you can manipulate, look more 11:48:08</p> <p>21 outstanding. 11:48:13</p> <p>22 Q. Why would you want to make it 11:48:14</p> <p>23 look more outstanding? 11:48:16</p> <p>24 A. So that it's easier to see. 11:48:17</p> <p>25 Q. Okay. 11:48:19</p>

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<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 Why make the tetrominoes 11:48:20</p> <p>3 brightly colored? 11:48:32</p> <p>4 MS. CENDALI: Objection. 11:48:34</p> <p>5 Foundation. 11:48:35</p> <p>6 A. So that they would be 11:48:36</p> <p>7 recognizable. 11:48:38</p> <p>8 Q. Okay. 11:48:38</p> <p>9 What about the starting 11:48:42</p> <p>10 orientation of the playing piece? Let's 11:48:47</p> <p>11 say I changed that element. Let's say the 11:48:50</p> <p>12 starting orientation of the L piece was on 11:48:53</p> <p>13 its back as opposed to on its butt. 11:48:58</p> <p>14 A. I don't think that would make 11:49:02</p> <p>15 any difference. 11:49:04</p> <p>16 Q. Would it change the amount of 11:49:04</p> <p>17 times that a player had to rotate a piece 11:49:06</p> <p>18 to get into the same position? 11:49:10</p> <p>19 A. It depends on what the start 11:49:12</p> <p>20 position and the end position. It's 11:49:14</p> <p>21 random. 11:49:16</p> <p>22 Q. Let's say that I wanted the same 11:49:16</p> <p>23 end position in both versions. 11:49:18</p> <p>24 Would the starting orientation 11:49:22</p> <p>25 affect the number of times the player had 11:49:26</p>	<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 you to assume that we want the end 11:50:11</p> <p>3 position to be the same in both 11:50:16</p> <p>4 circumstances. 11:50:17</p> <p>5 So assuming that, would the 11:50:19</p> <p>6 player have to rotate the piece 11:50:24</p> <p>7 differently if the starting orientation 11:50:27</p> <p>8 were different? 11:50:32</p> <p>9 MS. CENDALI: Objection to form. 11:50:33</p> <p>10 Objection. Incomplete hypothetical. 11:50:34</p> <p>11 Vague. 11:50:39</p> <p>12 A. Sure. Yes. 11:50:40</p> <p>13 Q. So going back to the list, can 11:50:41</p> <p>14 you tell me -- and we'll go through each 11:50:54</p> <p>15 one of them -- can you tell me when 11:50:58</p> <p>16 exactly that feature was included in the 11:51:00</p> <p>17 game of Tetris, whether it was the 11:51:02</p> <p>18 original Tetris or another version of 11:51:04</p> <p>19 Tetris that came after that? 11:51:07</p> <p>20 So the first, the long vertical 11:51:09</p> <p>21 rectangle playing field or matrix which is 11:51:12</p> <p>22 higher than wide, was that in the original 11:51:15</p> <p>23 version of Tetris? 11:51:19</p> <p>24 A. It was in the original 11:51:20</p> <p>25 audiovisual expression of the game, yes. 11:51:22</p>
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<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 to rotate the piece? 11:49:29</p> <p>3 A. If you were trying -- there's no 11:49:31</p> <p>4 particular reason why you would want to 11:49:33</p> <p>5 have the L piece in a final position 11:49:43</p> <p>6 rotation. There's four different ways you 11:49:43</p> <p>7 can land an L piece. 11:49:43</p> <p>8 Q. Right. 11:49:44</p> <p>9 And I'm giving you in this 11:49:45</p> <p>10 hypothetical -- 11:49:46</p> <p>11 MS. CENDALI: Please do not 11:49:47</p> <p>12 interrupt the witness. 11:49:49</p> <p>13 Q. That was my fault. Please 11:49:49</p> <p>14 continue. 11:49:51</p> <p>15 A. There are four different ways of 11:49:51</p> <p>16 landing an L piece and the four different 11:49:54</p> <p>17 ways have different benefits in different 11:49:56</p> <p>18 times. So the starting position to 11:49:59</p> <p>19 achieve any of those four positions would 11:50:01</p> <p>20 be random. 11:50:04</p> <p>21 Q. Right. 11:50:04</p> <p>22 So in my hypothetical -- and I 11:50:05</p> <p>23 understand that and thank you for that 11:50:07</p> <p>24 clarification. 11:50:09</p> <p>25 In my hypothetical, I'm asking 11:50:09</p>	<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. 11:51:26</p> <p>3 And are you differentiating 11:51:27</p> <p>4 between -- I'm sorry, you said it was in 11:51:30</p> <p>5 the original audiovisual expression of the 11:51:36</p> <p>6 game? 11:51:38</p> <p>7 A. Uh-huh. 11:51:38</p> <p>8 Q. Is that Tetris version zero? 11:51:39</p> <p>9 A. It's the Electronika 60 version 11:51:42</p> <p>10 of Tetris. 11:51:46</p> <p>11 Q. So when I say original Tetris 11:51:47</p> <p>12 version, you understand that to mean the 11:51:50</p> <p>13 Electronika 60 version? 11:51:52</p> <p>14 A. Yes. 11:51:55</p> <p>15 Q. Seven geometric playing pieces 11:51:55</p> <p>16 formed by four equally sized blocks joined 11:52:00</p> <p>17 at the sides, was that in the original 11:52:03</p> <p>18 version of Tetris? 11:52:05</p> <p>19 A. Seven geometric playing pieces 11:52:06</p> <p>20 formed by four equally sized blocks joined 11:52:11</p> <p>21 at the sides? Visually, no. 11:52:15</p> <p>22 Q. Why not? 11:52:17</p> <p>23 A. Because there were no graphics 11:52:18</p> <p>24 on the original machine. 11:52:20</p> <p>25 Q. Okay. 11:52:22</p>

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<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 What was in the original 11:52:22</p> <p>3 machine? You said there was a long 11:52:24</p> <p>4 vertical rectangle playing field. 11:52:26</p> <p>5 A. Yeah, it was, but the pieces 11:52:28</p> <p>6 were made out of little brackets, text 11:52:31</p> <p>7 brackets. So there are no rectangles. 11:52:32</p> <p>8 Q. I see. 11:52:35</p> <p>9 No rectangles? 11:52:36</p> <p>10 A. There were no blocks. It was 11:52:39</p> <p>11 pairs of square parentheses. 11:52:42</p> <p>12 Q. I see. 11:52:47</p> <p>13 Were there tetrominoes? 11:52:48</p> <p>14 A. They didn't have color yet. 11:52:51</p> <p>15 Tetromino seven shapes. Tetrominoes, yes. 11:52:59</p> <p>16 Q. So you said they weren't 11:53:04</p> <p>17 colored, so I guess the seven geometric 11:53:08</p> <p>18 playing pieces being brightly colored, 11:53:08</p> <p>19 that wasn't in the original. 11:53:10</p> <p>20 At what version did the pieces 11:53:11</p> <p>21 become colored? 11:53:13</p> <p>22 A. At the very next version, in the 11:53:14</p> <p>23 DOS version. 11:53:19</p> <p>24 Q. And what year was that? 11:53:20</p> <p>25 A. I'm not sure. In the mid 80s. 11:53:21</p>	<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 A. That's been here and there. 11:54:17</p> <p>3 There have been versions of Tetris where 11:54:21</p> <p>4 they are individually delineated and there 11:54:23</p> <p>5 are versions where they're not. That's 11:54:27</p> <p>6 part of the artistic expression, I guess. 11:54:29</p> <p>7 Q. And was it in the original 11:54:32</p> <p>8 version? 11:54:35</p> <p>9 A. In the original version, yeah, 11:54:35</p> <p>10 they were individually delineated. 11:54:39</p> <p>11 Q. The appearance of playing pieces 11:54:41</p> <p>12 at the top of the matrix, was that in the 11:54:43</p> <p>13 original version? 11:54:46</p> <p>14 A. Yes, it was. 11:54:47</p> <p>15 Q. The starting orientation of the 11:54:48</p> <p>16 playing pieces, now it's not specific as 11:54:53</p> <p>17 to what exactly the starting orientation 11:54:56</p> <p>18 is, but has the starting orientation 11:54:59</p> <p>19 changed from the original version of 11:55:02</p> <p>20 Tetris? 11:55:04</p> <p>21 A. Probably. It's an artistic 11:55:04</p> <p>22 decision. 11:55:10</p> <p>23 Q. Right. 11:55:10</p> <p>24 A. It's not -- yeah. 11:55:11</p> <p>25 Q. It's not what? 11:55:12</p>
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<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 Q. The blocks of the seven 11:53:25</p> <p>3 geometric playing pieces being 11:53:28</p> <p>4 individually delineated. 11:53:32</p> <p>5 Now, I know you said there 11:53:33</p> <p>6 weren't blocks in the original version, 11:53:35</p> <p>7 but were the pieces, the bracket pieces, 11:53:38</p> <p>8 separately delineated in the original 11:53:41</p> <p>9 version? 11:53:43</p> <p>10 A. What do you mean by separately 11:53:44</p> <p>11 delineated? 11:53:47</p> <p>12 Q. You said you recognized this as 11:53:48</p> <p>13 belonging in one of the games of Tetris. 11:53:50</p> <p>14 Which game does this belong to? 11:53:52</p> <p>15 A. I can't say. I don't know which 11:53:56</p> <p>16 one. 11:53:58</p> <p>17 Q. Can you think of any? 11:53:58</p> <p>18 A. Individually delineated? I'm 11:54:00</p> <p>19 just trying to understand what the word 11:54:02</p> <p>20 here means. 11:54:04</p> <p>21 Q. So I believe it means that you 11:54:05</p> <p>22 can actually see the individual mino 11:54:08</p> <p>23 versus it being a completely solid shape. 11:54:11</p> <p>24 A. Oh. 11:54:16</p> <p>25 Q. That's what I believe. 11:54:16</p>	<p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 A. It's not an artistic -- I mean 11:55:13</p> <p>3 it's an artistic decision. 11:55:16</p> <p>4 Q. I'm sorry, you were going to say 11:55:18</p> <p>5 it's not a -- 11:55:20</p> <p>6 A. It's not a -- how can I say, 11:55:21</p> <p>7 accord to the gameplay. 11:55:25</p> <p>8 Q. Right. 11:55:25</p> <p>9 No, I'm not asking whether it's 11:55:25</p> <p>10 accord to the gameplay or whether it's 11:55:25</p> <p>11 artistic, I'm asking whether the starting 11:55:28</p> <p>12 orientation of the playing pieces has 11:55:32</p> <p>13 changed since the original version of 11:55:36</p> <p>14 Tetris. 11:55:37</p> <p>15 A. I don't know. 11:55:38</p> <p>16 Q. But you said probably? 11:55:39</p> <p>17 A. Probably because it doesn't 11:55:40</p> <p>18 matter. 11:55:42</p> <p>19 Q. And why doesn't it matter? 11:55:42</p> <p>20 A. Because it doesn't affect 11:55:44</p> <p>21 gameplay. 11:55:46</p> <p>22 Q. But it does affect the number of 11:55:47</p> <p>23 times the player presses the button, I 11:55:51</p> <p>24 think you said before. 11:55:54</p> <p>25 MS. CENDALI: Objection. 11:55:55</p>

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<p style="text-align: right;">154</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 and how the game feels, then I would say 13:59:01</p> <p>3 yes, it does have some contribution to 13:59:03</p> <p>4 that. 13:59:06</p> <p>5 Q. Okay. 13:59:06</p> <p>6 Is it fair to say that failing 13:59:06</p> <p>7 to follow the standards outlined in this 13:59:14</p> <p>8 guideline might result in a different 13:59:18</p> <p>9 gameplay? 13:59:28</p> <p>10 MS. CENDALI: Objection to form. 13:59:28</p> <p>11 Vague. 13:59:32</p> <p>12 A. No. Again, we've allowed many 13:59:33</p> <p>13 other games that are very close to this 13:59:39</p> <p>14 that are not this. 13:59:41</p> <p>15 Q. I see. 13:59:42</p> <p>16 So sitting here today, can you 13:59:43</p> <p>17 think of any deviations from this 13:59:45</p> <p>18 guideline that you have allowed? 13:59:47</p> <p>19 MS. CENDALI: Objection to form. 13:59:51</p> <p>20 A. Yes, I've allowed different 13:59:53</p> <p>21 additional blocks in the screen, for 14:00:01</p> <p>22 example, that are not tetrominoes. I've 14:00:05</p> <p>23 -- or we have allowed different shapes of 14:00:09</p> <p>24 play field that is not ten by twenty. 14:00:13</p> <p>25 What else? We have allowed games where 14:00:18</p>	<p style="text-align: right;">156</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 Overbroad. 14:01:34</p> <p>3 A. We hope so. But I mean, we've 14:01:35</p> <p>4 given the guideline to people who have 14:01:38</p> <p>5 failed. 14:01:40</p> <p>6 Q. Failed to follow the guideline? 14:01:41</p> <p>7 A. Well, failed to make a good 14:01:43</p> <p>8 product. 14:01:45</p> <p>9 Q. Right. 14:01:45</p> <p>10 So is it possible to still 14:01:46</p> <p>11 follow the guideline but nonetheless make 14:01:48</p> <p>12 a bad product? 14:01:51</p> <p>13 A. Yes. 14:01:52</p> <p>14 Q. Okay. 14:01:52</p> <p>15 So now my question is limited to 14:01:53</p> <p>16 instances in which a licensee has not 14:01:58</p> <p>17 followed the guideline. 14:02:01</p> <p>18 Are there instances where a 14:02:02</p> <p>19 licensee has not followed the guideline 14:02:05</p> <p>20 but the game still has a look and feel of 14:02:07</p> <p>21 Tetris? 14:02:12</p> <p>22 A. Yes. 14:02:12</p> <p>23 Q. Can you tell me any examples of 14:02:16</p> <p>24 such a case? 14:02:18</p> <p>25 A. Well, there are a number of 14:02:19</p>
<p style="text-align: right;">155</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 the tetrominoes are not delineated as 14:00:26</p> <p>3 separate blocks. Actually, there's a lot 14:00:30</p> <p>4 of visual things that we've allowed that 14:00:41</p> <p>5 we didn't think of in the guideline for 14:00:43</p> <p>6 sure. I mean, every licensee creates 14:00:47</p> <p>7 something different. 14:00:49</p> <p>8 Q. Is there a sort of line that you 14:00:49</p> <p>9 draw in terms of what you will allow a 14:00:52</p> <p>10 licensee to do and what you will not allow 14:00:58</p> <p>11 a licensee to do? 14:00:58</p> <p>12 A. What we allow licensees to do is 14:00:58</p> <p>13 basically to create a better game than we 14:01:00</p> <p>14 license them. So if the game is 14:01:03</p> <p>15 substantially less -- a lower quality, 14:01:05</p> <p>16 then we will not allow the game. But at 14:01:09</p> <p>17 the end of the game -- so it has to look 14:01:12</p> <p>18 and feel like Tetris and it has to be of a 14:01:14</p> <p>19 quality level that is acceptable to us. 14:01:17</p> <p>20 Q. And would you say in general if 14:01:19</p> <p>21 a licensee was to follow the guidelines 14:01:23</p> <p>22 outlined in this document, that they would 14:01:28</p> <p>23 create a game that had the look and feel 14:01:30</p> <p>24 of Tetris? 14:01:33</p> <p>25 MS. CENDALI: Objection. 14:01:33</p>	<p style="text-align: right;">157</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 instances of games that are in, for 14:02:20</p> <p>3 example Tetris Pop which is one of our 14:02:26</p> <p>4 licensee's product or Tetris Party or the 14:02:28</p> <p>5 Game Boy -- sorry, Nintendo DS's Tetris 14:02:36</p> <p>6 which I would say don't follow the 14:02:40</p> <p>7 guideline but still I would look at it and 14:02:42</p> <p>8 say, yeah, everybody would agree that's 14:02:43</p> <p>9 Tetris. So they're covered by our 14:02:46</p> <p>10 licensing. 14:02:50</p> <p>11 Q. And how exactly did not they 14:02:50</p> <p>12 follow the guideline? 14:02:52</p> <p>13 A. I don't recall the exact 14:02:54</p> <p>14 instances. In fact, I didn't review every 14:02:55</p> <p>15 single pop variant. But I do know that 14:03:00</p> <p>16 some of them the pieces aren't falling or 14:03:03</p> <p>17 some of them the lines don't clear. 14:03:06</p> <p>18 Q. Okay. 14:03:09</p> <p>19 A. I mean, these are all outside of 14:03:09</p> <p>20 the visual expression that we think of as 14:03:12</p> <p>21 Tetris. 14:03:14</p> <p>22 Q. Okay. 14:03:14</p> <p>23 But would you say that if you 14:03:15</p> <p>24 had a game as the one that you described 14:03:17</p> <p>25 where the lines didn't clear, that it 14:03:20</p>

<p style="text-align: right;">230</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 record? 16:28:33</p> <p>3 A. This describes the animation and 16:29:11</p> <p>4 then a bunch of other things. 16:29:14</p> <p>5 Q. What are the bunch of other 16:29:17</p> <p>6 things? 16:29:19</p> <p>7 A. Like what you can do with the 16:29:19</p> <p>8 game pieces, how they move on the screen. 16:29:21</p> <p>9 It describes soft drop, hard drop, hold. 16:29:25</p> <p>10 Q. So I think my question was does 16:29:30</p> <p>11 it describe the animation of the playing 16:29:33</p> <p>12 pieces on the board. 16:29:36</p> <p>13 A. Right. 16:29:38</p> <p>14 And what I'm saying is some of 16:29:38</p> <p>15 this language describes the animation of 16:29:42</p> <p>16 the pieces on the play field. 16:29:45</p> <p>17 Q. Okay. 16:29:47</p> <p>18 And does it describe the 16:29:47</p> <p>19 rotation and movement of the pieces on the 16:29:48</p> <p>20 screen? 16:29:51</p> <p>21 MS. CENDALI: Asked and answered. 16:29:51</p> <p>22 And form. 16:30:01</p> <p>23 A. Among other things, yes. 16:30:02</p> <p>24 Q. So if you could turn to 16:30:36</p> <p>25 Exhibit 16 now. It's the 2003. It's the 16:30:38</p>	<p style="text-align: right;">232</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 A. In -- yes. 16:32:42</p> <p>3 Q. Okay. 16:32:48</p> <p>4 Can you please do so. 16:32:49</p> <p>5 A. In certain variations of Tetris, 16:32:51</p> <p>6 you can actually play with another or 16:32:59</p> <p>7 against another player. And when you 16:33:02</p> <p>8 clear a certain number of lines, it causes 16:33:13</p> <p>9 a detrimental effect to another player. 16:33:17</p> <p>10 The detrimental effect to another player 16:33:21</p> <p>11 is that garbage line appearing in the play 16:33:25</p> <p>12 field. 16:33:27</p> <p>13 Q. So is it fair to say that 16:33:27</p> <p>14 certain garbage lines in the playing field 16:33:30</p> <p>15 causes a detriment to the other player? 16:33:35</p> <p>16 MS. CENDALI: Objection to form. 16:33:39</p> <p>17 A. This has to do with a variant of 16:33:49</p> <p>18 Tetris. 16:33:49</p> <p>19 Q. So I'm asking you whether -- 16:33:49</p> <p>20 A. Sometimes. 16:33:49</p> <p>21 Q. Okay. 16:33:49</p> <p>22 But I believe that you said that 16:33:49</p> <p>23 the detrimental effect to another player 16:33:51</p> <p>24 is that garbage line appearing in the 16:33:55</p> <p>25 playing field; correct? 16:34:00</p>
<p style="text-align: right;">231</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 one we just looked at. 16:30:42</p> <p>3 If you could turn to page 16:31:25</p> <p>4 seventeen of the document. 16:31:27</p> <p>5 A. Okay. 16:31:45</p> <p>6 Q. Are you on page twenty-seven? 16:31:45</p> <p>7 A. Page seventeen? 16:31:47</p> <p>8 Q. I'm sorry, page twenty-seven. 16:31:49</p> <p>9 That was my mistake. 16:31:52</p> <p>10 A. Okay. 16:31:59</p> <p>11 Q. So do you see where it says in 16:32:01</p> <p>12 the second to last paragraph, "multiple 16:32:03</p> <p>13 lines of garbage set at the same time for 16:32:05</p> <p>14 share the same gap placement," and I think 16:32:10</p> <p>15 the "for" was a sic. "For instance, if a 16:32:14</p> <p>16 Tetris sends four lines of garbage to the 16:32:14</p> <p>17 opponent, the four garbage lines will have 16:32:18</p> <p>18 a gap in the same horizontal column 16:32:21</p> <p>19 creating a vertical well four cells deep. 16:32:24</p> <p>20 This arrangement can make it easy for the 16:32:28</p> <p>21 opponent to retaliate with a Tetris." 16:32:28</p> <p>22 Can you explain how this would 16:32:31</p> <p>23 be a retaliation for the Tetris? 16:32:36</p> <p>24 MS. CENDALI: Objection. 16:32:38</p> <p>25 Foundation. Form. 16:32:39</p>	<p style="text-align: right;">233</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 A. Correct. 16:34:01</p> <p>3 Q. So I'm asking you now why is it 16:34:01</p> <p>4 that the appearance of a garbage line is a 16:34:04</p> <p>5 detriment to another player? 16:34:07</p> <p>6 A. Oh, because it shrinks his -- 16:34:09</p> <p>7 the space he has to play in. 16:34:11</p> <p>8 Q. Okay. 16:34:14</p> <p>9 So shrinking space that a player 16:34:14</p> <p>10 has to play in causes a detriment to that 16:34:19</p> <p>11 player? 16:34:22</p> <p>12 A. I would say under certain 16:34:23</p> <p>13 circumstances, yes. 16:34:28</p> <p>14 Q. Okay. 16:34:29</p> <p>15 What are those circumstances? 16:34:30</p> <p>16 A. If the player is having trouble 16:34:31</p> <p>17 playing and there's little room, 16:34:37</p> <p>18 decreasing that room could cause him to 16:34:42</p> <p>19 reach the end game condition. 16:34:46</p> <p>20 Q. So the last paragraph of this 16:34:50</p> <p>21 page says, "there is an additional 16:35:10</p> <p>22 strategy that is effective if a player can 16:35:11</p> <p>23 score many triples or doubles in 16:35:12</p> <p>24 succession since the garbage line sent 16:35:14</p> <p>25 will have gaps in different places for 16:35:17</p>

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<p style="text-align: right;">290</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 reasoning. 18:24:01</p> <p>3 Q. Well, I'm asking do you believe 18:24:01</p> <p>4 that if you're able to see the next piece 18:24:03</p> <p>5 it makes gameplay easier? 18:24:08</p> <p>6 A. It changes the audiovisual 18:24:10</p> <p>7 experience. 18:24:17</p> <p>8 Q. So yes or no, does seeing the 18:24:17</p> <p>9 next piece make the gameplay easier? 18:24:22</p> <p>10 MS. CENDALI: Objection to form. 18:24:27</p> <p>11 A. Does seeing the next piece -- 18:24:28</p> <p>12 that's subjective. Some people benefit by 18:24:34</p> <p>13 it, other people it makes no difference. 18:24:38</p> <p>14 It's up to the player. 18:24:40</p> <p>15 Q. What about you? 18:24:41</p> <p>16 A. About me? 18:24:44</p> <p>17 Q. Yes. 18:24:45</p> <p>18 A. Me? Gosh. And again, it 18:24:45</p> <p>19 depends on which version of Tetris, which 18:24:52</p> <p>20 variant of Tetris I'm playing. Sometimes 18:24:55</p> <p>21 it helps and sometimes it makes no 18:24:58</p> <p>22 difference. 18:25:00</p> <p>23 Q. Okay. 18:25:00</p> <p>24 What does it help? 18:25:01</p> <p>25 A. It helps when I am planning 18:25:02</p>	<p style="text-align: right;">292</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 other rotate button. 18:27:14</p> <p>3 Q. And why might it help some 18:27:16</p> <p>4 players? 18:27:18</p> <p>5 A. For the reason I said on the 18:27:18</p> <p>6 interview. It might reduce the number of 18:27:23</p> <p>7 button presses. 18:27:25</p> <p>8 Q. So reducing the number of button 18:27:27</p> <p>9 presses for some players makes the game 18:27:30</p> <p>10 easier for those players? 18:27:33</p> <p>11 A. It changes their experience. 18:27:34</p> <p>12 Q. But you say it was really when 18:27:36</p> <p>13 you were in a pinch. 18:27:43</p> <p>14 A. Yeah, I know. 18:27:44</p> <p>15 Again, it's specific to a player 18:27:45</p> <p>16 and it's not a general thing. We think 18:27:51</p> <p>17 about things like that but it's not a 18:27:54</p> <p>18 given. 18:27:59</p> <p>19 Q. Okay. 18:28:02</p> <p>20 A. It may never happen. 18:28:02</p> <p>21 Q. But in your opinion, for some 18:28:04</p> <p>22 players, when they're really in a pinch, 18:28:07</p> <p>23 it's easier to rotate once instead of 18:28:10</p> <p>24 three times? 18:28:14</p> <p>25 MS. CENDALI: Objection to form. 18:28:15</p>
<p style="text-align: right;">291</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 where to put pieces. 18:25:08</p> <p>3 Q. Okay. 18:25:11</p> <p>4 So it does help when you are 18:25:11</p> <p>5 planning where to put pieces? 18:25:13</p> <p>6 A. For me sometimes it does. 18:25:16</p> <p>7 Q. I have one more clip. I'm 18:25:23</p> <p>8 sorry, let me tell you what portion of the 18:25:38</p> <p>9 clip it is. So it's minute nineteen 18:25:40</p> <p>10 second thirty-five to minute twenty second 18:25:44</p> <p>11 twenty-eight. 18:25:47</p> <p>12 (Whereupon an audio clip was 18:25:55</p> <p>13 played) 18:25:59</p> <p>14 Q. So you say here that when you're 18:26:01</p> <p>15 really in a pinch, instead of having to 18:26:47</p> <p>16 make three rotations, you can just make 18:26:49</p> <p>17 one rotation because the Game Boy allowed 18:26:52</p> <p>18 for both left and right rotation; is that 18:26:56</p> <p>19 right? 18:27:06</p> <p>20 A. That's what I said. 18:27:06</p> <p>21 Q. Do you disagree with that 18:27:06</p> <p>22 statement? 18:27:06</p> <p>23 A. I'm saying that that helps some 18:27:06</p> <p>24 players and it doesn't help other players. 18:27:07</p> <p>25 There's other players that never use the 18:27:10</p>	<p style="text-align: right;">293</p> <p>1 H. Rogers -- HIGHLY CONFIDENTIAL</p> <p>2 A. Theoretically. 18:28:16</p> <p>3 Q. Well, you theorized about that; 18:28:18</p> <p>4 correct? 18:28:22</p> <p>5 A. No, I didn't. 18:28:22</p> <p>6 Q. What did you say that was 18:28:23</p> <p>7 different in the audio interview? 18:28:24</p> <p>8 MS. CENDALI: Objection to form. 18:28:26</p> <p>9 A. I'm not sure what you're saying. 18:28:27</p> <p>10 Q. So in the audio interview you 18:28:31</p> <p>11 said, when you're really in a pinch, you 18:28:33</p> <p>12 can make one rotation versus three. 18:28:36</p> <p>13 A. That would be a justification 18:28:38</p> <p>14 for having a second button. Another 18:28:40</p> <p>15 justification would be that Nintendo's 18:28:44</p> <p>16 game machine has two buttons and they were 18:28:48</p> <p>17 just looking for something to do with the 18:28:50</p> <p>18 other button. 18:28:54</p> <p>19 Q. So taking away the issue of 18:28:54</p> <p>20 whether there's one button or two, I'm 18:28:58</p> <p>21 asking specifically about whether the fact 18:29:01</p> <p>22 that you would have to make one rotation 18:29:02</p> <p>23 instead of three makes the gameplay 18:29:04</p> <p>24 easier. 18:29:09</p> <p>25 MS. CENDALI: Asked and answered. 18:29:09</p>

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Exhibit 13

**to the Declaration of Johanna Schmitt, Esq.
in Support of Plaintiffs' Opposition to
Defendant's Motion for Summary Judgment**

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEW JERSEY

4 TETRIS HOLDING, LLC and THE TETRIS
5 COMPANY, LLC,

6 Plaintiffs,

7 -against-

8 XIO INTERACTIVE INC.,

9 Defendant.

10 Civil Action No. 3:09-cv-6115 (FLW) (DEA)
11

12 January 13, 2011

13 9:22 a.m.
14
15

16 HIGHLY CONFIDENTIAL DEPOSITION
17 of ALEXEY PAJITNOV, taken by Defendant,
18 pursuant to Notice, held at the offices of
19 KIRKLAND & ELLIS, LLP, 601 Lexington
20 Avenue, New York, New York before Wayne
21 Hock, a Notary Public of the State of New
22 York.
23
24
25

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<p style="text-align: right;">22</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 from pentomino to tetromino. 09:46:23</p> <p>3 Q. I understand. 09:46:25</p> <p>4 Is there anything else that you 09:46:26</p> <p>5 remember changing to make the game more 09:46:35</p> <p>6 fun or interesting? 09:46:35</p> <p>7 A. Again, it's more fun and 09:46:35</p> <p>8 interesting for me. 09:46:53</p> <p>9 Yes, I do remember I try other 09:46:55</p> <p>10 stuff but I came back and I try other 09:46:58</p> <p>11 stuff and I came back, and this is a 09:47:01</p> <p>12 normal process for any design, yes. 09:47:04</p> <p>13 For example, I tried to start 09:47:08</p> <p>14 the game not on the empty field but with 09:47:12</p> <p>15 some set up pieces inside, but then I 09:47:18</p> <p>16 didn't like it and I change it back to the 09:47:24</p> <p>17 empty field. That's another example which 09:47:27</p> <p>18 I can recollect from that time. 09:47:32</p> <p>19 Q. Anything else that you can think 09:47:34</p> <p>20 of? 09:47:37</p> <p>21 A. Not now. Well, maybe you will 09:47:38</p> <p>22 ask me more question, maybe I might 09:47:44</p> <p>23 remember something. At this time, no. 09:47:50</p> <p>24 Q. Maybe I will. 09:47:53</p> <p>25 Did the first version of Tetris 09:47:55</p>	<p style="text-align: right;">24</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 graphics. Well, if you see anything on 09:49:18</p> <p>3 the screen, there is a sort of graphics. 09:49:22</p> <p>4 In this respect, yes, my game has 09:49:24</p> <p>5 graphics. In technical sense, I didn't 09:49:27</p> <p>6 have ability to manipulate every pixel on 09:49:29</p> <p>7 the screen so I didn't have a graphics at 09:49:33</p> <p>8 all. 09:49:36</p> <p>9 Q. Okay. So I understand. 09:49:36</p> <p>10 A. So your definition is absolutely 09:49:38</p> <p>11 vital to have my truthful answer on this 09:49:41</p> <p>12 question. 09:49:45</p> <p>13 Q. Right. 09:49:45</p> <p>14 And so under your technical 09:49:46</p> <p>15 definition of graphics, which is the 09:49:49</p> <p>16 ability to manipulate pixels on the 09:49:51</p> <p>17 screen, there were no graphics? 09:49:54</p> <p>18 A. That's correct. 09:49:56</p> <p>19 MS. MAITRA: Okay. Thank you. I 09:50:08</p> <p>20 understand. 09:50:10</p> <p>21 I'd like to mark as Exhibit 31 a 09:50:13</p> <p>22 document starting with the Bates 09:50:43</p> <p>23 numbers TETRIS-XIO-0025966. 09:50:45</p> <p>24 (Whereupon, a five-page document 09:50:52</p> <p>25 was marked Defendant's Exhibit 31 09:50:52</p>
<p style="text-align: right;">23</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 that you worked on include any graphics? 09:47:57</p> <p>3 A. Define graphics, please. 09:48:03</p> <p>4 Q. What do you understand the term 09:48:05</p> <p>5 "graphics" to mean? 09:48:08</p> <p>6 A. Well, there are lots of 09:48:09</p> <p>7 different understandings of this word. In 09:48:12</p> <p>8 my technical world under graphics people 09:48:14</p> <p>9 understand ability to manipulate every 09:48:21</p> <p>10 pixel on the screen, for example. In your 09:48:27</p> <p>11 world, graphic is something what you could 09:48:31</p> <p>12 see by your eyes. That agree with me that 09:48:34</p> <p>13 this is two very different definitions. 09:48:40</p> <p>14 Q. So I'm just trying to understand 09:48:43</p> <p>15 the two understandings that you gave. 09:48:48</p> <p>16 The technical -- in your 09:48:50</p> <p>17 technical world, graphics people 09:48:51</p> <p>18 understand the ability to manipulate every 09:48:56</p> <p>19 pixel on the screen; is that right? 09:48:59</p> <p>20 A. Uh-huh. 09:49:01</p> <p>21 Q. Okay. 09:49:02</p> <p>22 So I don't quite understand 09:49:02</p> <p>23 that. 09:49:11</p> <p>24 Could you explain that to me? 09:49:11</p> <p>25 A. You ask me does my game have any 09:49:13</p>	<p style="text-align: right;">25</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 for identification.) 09:51:27</p> <p>3 Q. If you could look through the 09:51:27</p> <p>4 document and tell me when you're done 09:51:29</p> <p>5 looking through it, please. 09:51:32</p> <p>6 A. (Reviewing). 09:51:33</p> <p>7 I can make mark on this paper; 09:51:46</p> <p>8 no? 09:54:38</p> <p>9 Q. It's probably best if you don't. 09:54:41</p> <p>10 MS. CENDALI: It's definitely 09:54:44</p> <p>11 best if you don't. 09:54:47</p> <p>12 Q. And you should also know, Mr. 09:54:55</p> <p>13 Pajitnov, if you write anything, we get to 09:54:58</p> <p>14 look at it, so you probably don't want to 09:55:00</p> <p>15 write anything. It's your choice. 09:55:02</p> <p>16 A. (Reviewing). 09:55:16</p> <p>17 Okay. 09:57:38</p> <p>18 Q. You're done? 09:57:39</p> <p>19 A. Uh-huh. 09:57:40</p> <p>20 Q. Do you recognize this document? 09:57:41</p> <p>21 A. Yeah, it seems familiar to me. 09:57:42</p> <p>22 Q. Okay. 09:57:47</p> <p>23 What is it? 09:57:48</p> <p>24 A. I think it's one of the 09:57:48</p> <p>25 interviews I gave some journalist. I 09:57:50</p>

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<p style="text-align: right;">90</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 shadow piece under the playing piece. 11:47:16</p> <p>3 MS. CENDALI: Objection to form. 11:47:21</p> <p>4 Q. Was that something that was 11:47:23</p> <p>5 included in the original version of 11:47:27</p> <p>6 Tetris, the Elektronika 60 version of 11:47:29</p> <p>7 Tetris? 11:47:35</p> <p>8 A. No. 11:47:35</p> <p>9 Q. Do you know when it was 11:47:35</p> <p>10 incorporated? 11:47:37</p> <p>11 A. I can't remember. I'm sorry, it 11:47:37</p> <p>12 was some versions during history. At one 11:47:46</p> <p>13 point it appears and it was a very useful 11:47:49</p> <p>14 feature so it remained in most of our 11:47:54</p> <p>15 versions. 11:47:59</p> <p>16 Q. You said it was a very useful 11:47:59</p> <p>17 feature. 11:48:01</p> <p>18 Why was it a useful feature? 11:48:01</p> <p>19 A. Well, because it simplify -- not 11:48:05</p> <p>20 simplify, it make player feel more 11:48:12</p> <p>21 comfortable at the game because he doesn't 11:48:18</p> <p>22 need to move his eyes back and forth all 11:48:20</p> <p>23 the time. That's my understanding why 11:48:23</p> <p>24 it's useful. But just my feeling it was 11:48:38</p> <p>25 useful. I liked it. I saw it and I said 11:48:41</p>	<p style="text-align: right;">92</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 A. Yes, correct. 11:49:34</p> <p>3 Q. So what exactly is this feature? 11:49:36</p> <p>4 A. Well, when your piece moves -- 11:49:38</p> <p>5 well, if you are a player and when your 11:50:00</p> <p>6 piece moves, it is colored in order for 11:50:04</p> <p>7 you to see it clearly and follow by eyes 11:50:08</p> <p>8 and again so it's some kind of color 11:50:16</p> <p>9 coding involved so it might help the 11:50:20</p> <p>10 beginner player to recognize the piece 11:50:25</p> <p>11 easily or whatever. But as it's locked 11:50:29</p> <p>12 down, its border becomes the part of the 11:50:32</p> <p>13 play field so -- and for many versions 11:50:41</p> <p>14 it's no reason to keep the color there 11:50:45</p> <p>15 because it doesn't help anymore. You 11:50:49</p> <p>16 don't need to recognize the lockdown piece 11:50:53</p> <p>17 as a piece anymore so what is important is 11:50:59</p> <p>18 the separate blocks there. And in order 11:51:03</p> <p>19 to not have this play field very colorful, 11:51:05</p> <p>20 many colors, it's just -- well, in some 11:51:12</p> <p>21 versions they put it in one color as soon 11:51:16</p> <p>22 as it's background so you clearly see the 11:51:21</p> <p>23 play field in one color and the colorful 11:51:25</p> <p>24 piece coming down. 11:51:27</p> <p>25 Q. Okay. I understand. Thank you. 11:51:28</p>
<p style="text-align: right;">91</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 that's cool and that's how it end up in 11:48:44</p> <p>3 the game. 11:48:47</p> <p>4 Q. I see. 11:48:47</p> <p>5 Now, I think we discussed this, 11:48:48</p> <p>6 but the next feature is the display of the 11:48:51</p> <p>7 next playing piece that will fall down in 11:48:54</p> <p>8 the matrix or the playing field, and I 11:48:58</p> <p>9 think you referred to that as the 11:49:00</p> <p>10 predictive -- 11:49:02</p> <p>11 A. Prediction. 11:49:04</p> <p>12 Q. Prediction, yes. 11:49:05</p> <p>13 So that was in the original 11:49:06</p> <p>14 version of Tetris, the Elektronika 60 11:49:07</p> <p>15 version? 11:49:10</p> <p>16 A. Yes. 11:49:10</p> <p>17 Q. Now, this I actually would like 11:49:14</p> <p>18 you to actually explain this to me because 11:49:16</p> <p>19 I don't quite understand it. The change 11:49:19</p> <p>20 in color of the playing pieces when they 11:49:21</p> <p>21 are in lockdown mode. 11:49:24</p> <p>22 First I assume this wasn't in 11:49:26</p> <p>23 the original version of Tetris because you 11:49:28</p> <p>24 couldn't change the color in the original 11:49:30</p> <p>25 version of Tetris; correct? 11:49:32</p>	<p style="text-align: right;">93</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 The screen layout in multiplayer 11:51:31</p> <p>3 versions with the player's matrix 11:51:39</p> <p>4 appearing most prominently on the screen 11:51:41</p> <p>5 and the opponents' matrices appearing 11:51:45</p> <p>6 smaller than the player's matrix to the 11:51:47</p> <p>7 side of the player's matrix. 11:51:48</p> <p>8 First, were you involved in the 11:51:50</p> <p>9 development of the multiplayer versions of 11:51:56</p> <p>10 Tetris? 11:51:59</p> <p>11 A. Development? Please clarify it. 11:51:59</p> <p>12 Q. Did you contribute at all to the 11:52:06</p> <p>13 -- did you make any contribution to the 11:52:11</p> <p>14 multiplayer versions of Tetris? 11:52:14</p> <p>15 A. Yes, I did participate in 11:52:17</p> <p>16 several designs of the multiplayer 11:52:19</p> <p>17 versions. Not the first one, by the way. 11:52:22</p> <p>18 Q. And what about this particular 11:52:25</p> <p>19 feature where the player's matrix is most 11:52:26</p> <p>20 prominent on the screen and the opponents' 11:52:31</p> <p>21 matrices are smaller than the player's 11:52:33</p> <p>22 matrix? 11:52:37</p> <p>23 MS. CENDALI: Wait a minute. 11:52:38</p> <p>24 Objection to form. 11:52:39</p> <p>25 You can answer. Objection to 11:52:41</p>

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<p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 form. 11:52:44</p> <p>3 Q. Sorry, continue. 11:52:45</p> <p>4 Would you like that read back? 11:52:48</p> <p>5 MS. CENDALI: I'm actually not 11:52:56</p> <p>6 sure what the pending question is. 11:52:58</p> <p>7 A. Excuse me, could you please 11:52:59</p> <p>8 repeat the essence of the question? 11:53:03</p> <p>9 MS. MAITRA: I need to restate it 11:53:06</p> <p>10 because it wasn't a proper question, 11:53:08</p> <p>11 so let me ask it properly. 11:53:09</p> <p>12 Q. Were you involved in the 11:53:12</p> <p>13 development of this particular feature 11:53:14</p> <p>14 which is the player's matrix appearing 11:53:15</p> <p>15 most prominently on the screen and the 11:53:21</p> <p>16 opponents' matrices appearing smaller than 11:53:29</p> <p>17 the player's matrix and to the side of the 11:53:29</p> <p>18 player's matrix? 11:53:29</p> <p>19 A. To the best of my knowledge, I 11:53:30</p> <p>20 wasn't involved in the -- I didn't do any 11:53:35</p> <p>21 contribution for this particular feature. 11:53:37</p> <p>22 Q. Okay. Thank you. 11:53:39</p> <p>23 So I'd like to unfortunately 11:53:40</p> <p>24 stick on this list and ask you if there 11:53:47</p> <p>25 was any sort of game design reason for 11:53:50</p>	<p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 symmetrical form pieces which were 11:55:14</p> <p>3 isometrical in order to have very pleasant 11:55:18</p> <p>4 for me number seven of the acting 11:55:23</p> <p>5 tetrominoes. 11:55:27</p> <p>6 Q. And earlier you had mentioned 11:55:28</p> <p>7 that you had tried the game with 11:55:31</p> <p>8 pentominoes and there were too many of 11:55:35</p> <p>9 them, there were twelve; right? 11:55:37</p> <p>10 A. Much more than twelve. 11:55:39</p> <p>11 Q. Oh, right, if you take also the 11:55:41</p> <p>12 mirror images of all of them. 11:55:44</p> <p>13 So to your mind there were too 11:55:46</p> <p>14 many for the game to be fun? 11:55:49</p> <p>15 A. For the game I want to play, 11:55:55</p> <p>16 yes. Because actually I was shown the 11:55:58</p> <p>17 game with five pieces fully developed 11:56:01</p> <p>18 afterwards, it was in the other country, 11:56:05</p> <p>19 and it's some kind of playable version. 11:56:07</p> <p>20 So I couldn't imagine that some people 11:56:13</p> <p>21 really enjoy it. They even have full fun 11:56:18</p> <p>22 club of it. 11:56:21</p> <p>23 Q. But you didn't enjoy it? 11:56:21</p> <p>24 A. No. 11:56:23</p> <p>25 Q. Why not? 11:56:23</p>
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<p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 having a long vertical rectangle playing 11:53:54</p> <p>3 field or matrix which is higher than wide. 11:54:00</p> <p>4 MS. CENDALI: Objection to form. 11:54:03</p> <p>5 Vague. 11:54:04</p> <p>6 You can answer. 11:54:05</p> <p>7 A. You know, when we design, we 11:54:06</p> <p>8 don't usually think why the reasons. We 11:54:14</p> <p>9 try this, try that, we try more kind of 11:54:21</p> <p>10 balance this stuff rather than take some 11:54:26</p> <p>11 reasoning under it. So I can answer that 11:54:27</p> <p>12 no, there was no reason. It was just my 11:54:30</p> <p>13 preference. 11:54:33</p> <p>14 Q. Okay. I understand. 11:54:33</p> <p>15 So would the seven geometric 11:54:36</p> <p>16 playing pieces formed by four equally 11:54:42</p> <p>17 sized blocks joined at the sides, do you 11:54:45</p> <p>18 understand that to mean a tetromino? 11:54:48</p> <p>19 A. Technically this is not correct. 11:54:49</p> <p>20 Q. Okay. 11:54:51</p> <p>21 Tell me why not. 11:54:52</p> <p>22 A. Because there are just five 11:54:53</p> <p>23 tetromino existing in the string 11:54:58</p> <p>24 definition of this shape, of the 11:55:09</p> <p>25 tetromino. So basically I add two more 11:55:10</p>	<p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 A. The way I want my game to play 11:56:24</p> <p>3 is I want to have a kind of certain tempo 11:56:31</p> <p>4 of receiving the pleasure out of the game 11:56:40</p> <p>5 experience. 11:56:45</p> <p>6 Q. Tempo. Okay. 11:56:46</p> <p>7 A. I don't want to think too much 11:56:47</p> <p>8 or to have the game very slow. I don't 11:56:51</p> <p>9 want it to be really fast. But I have a 11:56:54</p> <p>10 feeling that some in the middle it's 11:56:57</p> <p>11 something very right to have. 11:57:00</p> <p>12 Q. I see. 11:57:02</p> <p>13 So it -- so with the 11:57:02</p> <p>14 pentominoes, you feel like you would have 11:57:08</p> <p>15 to think too much but with maybe a domino 11:57:10</p> <p>16 you would think maybe too little and the 11:57:20</p> <p>17 tetromino you sort of have to think at 11:57:23</p> <p>18 exactly the right tempo? 11:57:26</p> <p>19 MS. CENDALI: Just a second. 11:57:28</p> <p>20 Objection to form. 11:57:29</p> <p>21 A. Well, I did try several stuff. 11:57:30</p> <p>22 And yes, it doesn't feel exactly right 11:57:40</p> <p>23 generally, but it feel very right for me 11:57:45</p> <p>24 to enjoy. 11:57:48</p> <p>25 Q. Right. 11:57:49</p>

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<p style="text-align: right;">138</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 and accessories?" 14:13:35</p> <p>3 MS. CENDALI: As used in this 14:13:36</p> <p>4 document? Objection. 14:13:38</p> <p>5 A. Well, usually when I use the 14:13:39</p> <p>6 word "rule," I try to please the people 14:13:46</p> <p>7 very unfamiliar with the game production 14:13:52</p> <p>8 and industry, because that's what they 14:13:55</p> <p>9 know about the game. But what I really 14:13:58</p> <p>10 mean under this is the features of the 14:14:03</p> <p>11 game which determine what I want to 14:14:06</p> <p>12 express, what I want to play myself. And 14:14:10</p> <p>13 those stuff are -- well, pretty much 14:14:12</p> <p>14 covered with the list on Exhibit 34. 14:14:21</p> <p>15 Q. Okay. 14:14:24</p> <p>16 Do people who are unfamiliar 14:14:24</p> <p>17 with the game production and industry 14:14:32</p> <p>18 understand, in your opinion, the word 14:14:38</p> <p>19 "rules" differently than you? 14:14:42</p> <p>20 MS. CENDALI: Objection. 14:14:44</p> <p>21 Foundation. 14:14:45</p> <p>22 You can answer. 14:14:45</p> <p>23 A. Yes, like a grandfather -- like 14:14:46</p> <p>24 a grandmother listen for her grandson and 14:14:54</p> <p>25 he say, oh, I played these games and the 14:14:59</p>	<p style="text-align: right;">140</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 A. So the game itself as a product 14:16:21</p> <p>3 is the kind of complicated psychological 14:16:24</p> <p>4 product. It appeals to the human mood, to 14:16:30</p> <p>5 the human pleasure, and whatever. And 14:16:37</p> <p>6 there are some features in the game which 14:16:40</p> <p>7 end up serving this stuff. From the other 14:16:43</p> <p>8 hand, it's a very technical product, 14:16:49</p> <p>9 especially computer games. It requires 14:16:52</p> <p>10 programming, it requires kind of proper 14:16:56</p> <p>11 functioning of certain hardware, and 14:17:01</p> <p>12 property of this hardware. So in this 14:17:05</p> <p>13 respect, some of the game properties are 14:17:10</p> <p>14 more related to the game as a program. 14:17:15</p> <p>15 So when we call -- when I use 14:17:19</p> <p>16 personally the word "mechanics of the 14:17:24</p> <p>17 game," I usually refer to more kind of 14:17:27</p> <p>18 technical aspect of the game, rather 14:17:31</p> <p>19 program than psychological piece of 14:17:35</p> <p>20 enjoyment or happiness or whatever you 14:17:42</p> <p>21 wish to call it. 14:17:43</p> <p>22 Q. But for the sake of 14:17:44</p> <p>23 simplicity -- 14:17:46</p> <p>24 A. All of them are features. Some 14:17:48</p> <p>25 of those features which kind of related 14:17:51</p>
<p style="text-align: right;">139</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 word "game" is immediately associated in 14:15:03</p> <p>3 the brain of the grandmother with the 14:15:07</p> <p>4 rules, so she asks what is the rules. So 14:15:08</p> <p>5 this is kind of everyday association and 14:15:11</p> <p>6 that's why I mentioned it. That's why 14:15:14</p> <p>7 sometimes in my interview I mentioned 14:15:18</p> <p>8 rules when I have in mind the real 14:15:20</p> <p>9 features and maybe sometimes mechanics of 14:15:23</p> <p>10 the game or something like that. 14:15:28</p> <p>11 Q. Okay. 14:15:30</p> <p>12 So is it fair to say the items 14:15:33</p> <p>13 on Exhibit 35 are the mechanics of the 14:15:35</p> <p>14 game? 14:15:39</p> <p>15 A. Thirty-four you mean? 14:15:39</p> <p>16 Q. Thirty-four, yes. 14:15:41</p> <p>17 MS. CENDALI: Asked and answered. 14:15:44</p> <p>18 You can answer. 14:15:46</p> <p>19 A. For the sake of simplicity, yes. 14:15:46</p> <p>20 It is some respect in the word 14:16:00</p> <p>21 "mechanics," but it is very professional. 14:16:03</p> <p>22 I don't think you're interested in it. 14:16:08</p> <p>23 Q. I am interested. 14:16:10</p> <p>24 Could you explain what you mean 14:16:14</p> <p>25 -- please explain what you mean. 14:16:18</p>	<p style="text-align: right;">141</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 more to your brain or to your emotions and 14:17:57</p> <p>3 some of these features are related more to 14:18:04</p> <p>4 your fingers and pushing buttons and your 14:18:06</p> <p>5 blinking or whatever you do while you play 14:18:12</p> <p>6 the game. 14:18:15</p> <p>7 Q. Can we actually look back at the 14:18:16</p> <p>8 list, Exhibit 34? 14:18:22</p> <p>9 You say that some of them relate 14:18:24</p> <p>10 more to emotions and others relate to your 14:18:27</p> <p>11 fingers and pushing buttons. 14:18:30</p> <p>12 A. Uh-huh. 14:18:32</p> <p>13 Q. Could you tell me, let's go 14:18:33</p> <p>14 through them, the long vertical rectangle 14:18:35</p> <p>15 playing field or matrix which is higher 14:18:41</p> <p>16 than wide. 14:18:44</p> <p>17 MS. CENDALI: Objection. 14:18:45</p> <p>18 Q. Which of the two categories does 14:18:46</p> <p>19 this one fall in? 14:18:50</p> <p>20 MS. CENDALI: Objection to form. 14:18:53</p> <p>21 A. So get me right. So what I 14:18:53</p> <p>22 tried to mention that all of them are 14:18:59</p> <p>23 features. Some of them are related to 14:19:04</p> <p>24 this and other related to this, but every 14:19:06</p> <p>25 one has a mixture of both. So sometimes I 14:19:10</p>

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<p style="text-align: right;">142</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 would have a very difficult time to 14:19:15</p> <p>3 categorize whether it's mechanics or 14:19:17</p> <p>4 whatever or it's just a feature. And 14:19:19</p> <p>5 basically it's my use of the word 14:19:22</p> <p>6 "mechanics." Some people could not agree 14:19:29</p> <p>7 with me and they're absolutely right. 14:19:33</p> <p>8 Q. Fine. 14:19:35</p> <p>9 A. So coming back to your question, 14:19:36</p> <p>10 this rectangle stuff is more kind of 14:19:43</p> <p>11 emotional. I am more pleased to play on 14:19:52</p> <p>12 vertical screen rather than horizontal, 14:19:59</p> <p>13 for example, myself. 14:20:03</p> <p>14 Q. And what about the seven 14:20:04</p> <p>15 geometric playing pieces formed by four 14:20:06</p> <p>16 equally sized blocks joined at the sides? 14:20:09</p> <p>17 MS. CENDALI: Objection to form. 14:20:13</p> <p>18 A. Again, that's a mixture of 14:20:33</p> <p>19 mechanical and if we want to -- I never 14:20:47</p> <p>20 tried to separate this issue kind of 14:20:48</p> <p>21 strictly between this and this. It's not 14:20:51</p> <p>22 a category which I have in my mind. 14:20:53</p> <p>23 But if you ask me, I would say 14:20:55</p> <p>24 that originally it was more kind of 14:20:59</p> <p>25 mechanics of the game but later on it 14:21:07</p>	<p style="text-align: right;">144</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 Q. No, we were talking about the 14:22:56</p> <p>3 seven geometric playing pieces being 14:22:58</p> <p>4 formed by four -- so I'm talking about the 14:23:01</p> <p>5 second one, the seven geometric playing 14:23:01</p> <p>6 pieces being brightly colored, the fact 14:23:04</p> <p>7 that they were brightly colored. 14:23:05</p> <p>8 MS. CENDALI: Objection to form. 14:23:08</p> <p>9 Objection. Relevance. 14:23:09</p> <p>10 You can answer. 14:23:11</p> <p>11 A. Well, it is definitely emotional 14:23:11</p> <p>12 stuff. Brightly colored, not brightly 14:23:17</p> <p>13 colored. If you have bad old device, it 14:23:22</p> <p>14 wouldn't be that bright. 14:23:26</p> <p>15 Q. What about the next one, the 14:23:32</p> <p>16 blocks of the seven geometric playing 14:23:33</p> <p>17 pieces being individually delineated? Do 14:23:35</p> <p>18 you believe that is part of the mechanics 14:23:39</p> <p>19 or part of the emotion of the game? 14:23:40</p> <p>20 MS. CENDALI: Objection to form. 14:23:45</p> <p>21 A. It's really hard to say. I'd 14:23:48</p> <p>22 say it's a mixture. 14:23:59</p> <p>23 Q. Okay. 14:24:01</p> <p>24 What about the appearance of the 14:24:01</p> <p>25 playing pieces at the top of the matrix? 14:24:05</p>
<p style="text-align: right;">143</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 becomes emotional stuff because we get 14:21:13</p> <p>3 attached to these pieces, we like to play 14:21:15</p> <p>4 it, and somehow they really pleased us, to 14:21:19</p> <p>5 some extent. 14:21:25</p> <p>6 Q. I understand. 14:21:26</p> <p>7 Why was it originally part of 14:21:26</p> <p>8 the mechanics? 14:21:30</p> <p>9 MS. CENDALI: Objection to form. 14:21:34</p> <p>10 A. Well, when I got this principle 14:21:38</p> <p>11 of real-time game and I had my 14:21:43</p> <p>12 pentominoes, it seems to me that I want to 14:21:48</p> <p>13 use this abstract geometrical object to 14:21:54</p> <p>14 serve in my game, it was my instrument, it 14:22:04</p> <p>15 was my tools to design this game 14:22:08</p> <p>16 experience. And the fact that they have 14:22:12</p> <p>17 good variety and more or less consistent 14:22:17</p> <p>18 to each other make it a rather mechanical 14:22:24</p> <p>19 feature rather than really emotional. 14:22:31</p> <p>20 It's nothing to do with emotional -- with 14:22:33</p> <p>21 emotions, just all the geometrical shape. 14:22:39</p> <p>22 Q. What about the seven geometric 14:22:45</p> <p>23 playing pieces being brightly colored? 14:22:51</p> <p>24 A. I think I just answered you 14:22:54</p> <p>25 that. 14:22:56</p>	<p style="text-align: right;">145</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 MS. CENDALI: Objection to form. 14:24:07</p> <p>3 A. Well, again it's rather a 14:24:08</p> <p>4 mixture of both. Maybe it was definitely 14:24:28</p> <p>5 more mechanical stuff because it's easier 14:24:32</p> <p>6 to scroll something -- program-wise, it's 14:24:35</p> <p>7 easier for programmer to scroll something 14:24:41</p> <p>8 down rather than go in the other 14:24:45</p> <p>9 direction. It saved me kind of maybe 14:24:47</p> <p>10 fifteen minutes of extra programming or 14:24:51</p> <p>11 something like that. But that's not a 14:24:54</p> <p>12 decisive kind of argument in this respect. 14:24:57</p> <p>13 Q. I understand. 14:25:02</p> <p>14 What about the starting 14:25:02</p> <p>15 orientation of the playing pieces? 14:25:06</p> <p>16 MS. CENDALI: Objection to form. 14:25:08</p> <p>17 Q. Sorry, we're at one, two, three, 14:25:15</p> <p>18 four, five, six. 14:25:18</p> <p>19 A. We clarified it before what does 14:25:20</p> <p>20 it mean exactly. 14:25:22</p> <p>21 Q. Sure. 14:25:23</p> <p>22 A. But I kind of lost this point, 14:25:24</p> <p>23 so starting orientation? Well, for me 14:25:30</p> <p>24 it's -- it is a feature in the game but in 14:25:38</p> <p>25 different versions they are different, so 14:25:43</p>

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<p style="text-align: right;">146</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 I don't know. It refers to both. 14:25:47</p> <p>3 Q. Okay. 14:25:51</p> <p>4 What about the downward, 14:25:51</p> <p>5 lateral, and rotating movement of the 14:25:56</p> <p>6 playing pieces, do you consider this to be 14:25:59</p> <p>7 a game mechanic or a feature? 14:26:01</p> <p>8 MS. CENDALI: Objection to form. 14:26:06</p> <p>9 A. This is definitely both because 14:26:16</p> <p>10 it needs certain efforts to program it and 14:26:17</p> <p>11 the programming is a big part of it, but 14:26:20</p> <p>12 it's very significant for the player how 14:26:25</p> <p>13 he manipulates the pieces and that really 14:26:28</p> <p>14 determine his game. 14:26:31</p> <p>15 Q. And the next one, the 14:26:33</p> <p>16 disappearance of any completed horizontal 14:26:35</p> <p>17 line. 14:26:38</p> <p>18 Is this a game mechanic or is it 14:26:39</p> <p>19 a feature? 14:26:45</p> <p>20 MS. CENDALI: Objection to form. 14:26:45</p> <p>21 A. Those stuff are also both. 14:26:46</p> <p>22 Q. Okay. 14:26:53</p> <p>23 Why? 14:26:54</p> <p>24 A. Well, first of all, it really 14:26:54</p> <p>25 give a very big investment in how the game 14:27:06</p>	<p style="text-align: right;">148</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 MS. CENDALI: Objection to form. 14:28:13</p> <p>3 Q. Sorry, let me just clear that 14:28:20</p> <p>4 sentence again. 14:28:22</p> <p>5 The subsequent consolidation of 14:28:23</p> <p>6 the playing pieces remaining on the 14:28:26</p> <p>7 playing field as a result of the downward 14:28:28</p> <p>8 shift in the space vacated by the 14:28:31</p> <p>9 disappearing line. 14:28:34</p> <p>10 Do you consider this to be a 14:28:36</p> <p>11 game mechanic? 14:28:38</p> <p>12 MS. CENDALI: Objection to the 14:28:38</p> <p>13 form. 14:28:39</p> <p>14 A. That's both. 14:28:40</p> <p>15 Q. Okay. 14:28:41</p> <p>16 A. That's both. 14:28:42</p> <p>17 Q. And why is it both? 14:28:43</p> <p>18 A. In game, because it is a very 14:28:44</p> <p>19 significant part of the look and feel and 14:28:47</p> <p>20 your -- the player's understanding of the 14:28:48</p> <p>21 game. But from the other hand, it's a 14:28:52</p> <p>22 certain algorithm should be performed and 14:29:03</p> <p>23 debugged and implemented. 14:29:03</p> <p>24 Q. The display of garbage lines 14:29:06</p> <p>25 with at least one missing block in random 14:29:15</p>
<p style="text-align: right;">147</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 look and feel. That's what people 14:27:09</p> <p>3 recognize and that's what people 14:27:11</p> <p>4 understand, so in this respect it's a 14:27:13</p> <p>5 definitely feature of the game. 14:27:18</p> <p>6 Mechanical stuff, well, it is 14:27:21</p> <p>7 mechanical because it needs to be kind of 14:27:26</p> <p>8 described to the programmer or whatever 14:27:30</p> <p>9 what exactly should happen and it's not 14:27:32</p> <p>10 kind of very trivial stuff to do. In this 14:27:37</p> <p>11 respect, it might be mechanical. 14:27:41</p> <p>12 Q. Okay. Thank you. 14:27:43</p> <p>13 The subsequent consolidation of 14:27:44</p> <p>14 the playing pieces remaining on the 14:27:51</p> <p>15 playing field as a result of the downward 14:27:52</p> <p>16 shift into the space vacated by the 14:27:54</p> <p>17 disappearance line. 14:27:57</p> <p>18 And I know that you corrected 14:27:58</p> <p>19 this to be part of the playing pieces; 14:27:59</p> <p>20 correct? 14:28:03</p> <p>21 A. Yeah. 14:28:03</p> <p>22 Q. So with that understanding of 14:28:04</p> <p>23 the feature, with that correction to the 14:28:08</p> <p>24 feature, do you consider this to be a game 14:28:09</p> <p>25 mechanic? 14:28:12</p>	<p style="text-align: right;">149</p> <p>1 A. Pajitnov -- HIGHLY CONFIDENTIAL</p> <p>2 order. 14:29:19</p> <p>3 Is this a game mechanic? 14:29:19</p> <p>4 MS. CENDALI: Objection. 14:29:21</p> <p>5 A. Actually, it's both. 14:29:21</p> <p>6 As a mechanic, it's -- well, as 14:29:28</p> <p>7 a mechanic, it should be -- it is certain 14:29:31</p> <p>8 rules how many -- well, somebody need to 14:29:36</p> <p>9 specify how many holes or how random they 14:29:39</p> <p>10 are at at which moment the line appears. 14:29:47</p> <p>11 But it is definitely the instrument to 14:29:51</p> <p>12 kind of really play the game for one 14:29:55</p> <p>13 opponent to the other one. 14:30:07</p> <p>14 Q. I see. 14:30:09</p> <p>15 What about the appearance of 14:30:09</p> <p>16 blocks automatically filling from the 14:30:14</p> <p>17 bottom to the top when the game is over? 14:30:16</p> <p>18 Is this a game mechanic? 14:30:19</p> <p>19 MS. CENDALI: Objection to form. 14:30:21</p> <p>20 A. No, it's not a game mechanic. 14:30:22</p> <p>21 It's rather than a visual feature which 14:30:31</p> <p>22 kind of made the game more recognizable. 14:30:36</p> <p>23 The game is over. 14:30:41</p> <p>24 Q. Okay. 14:30:45</p> <p>25 What about the appearance of a 14:30:45</p>

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Exhibit 14

**to the Declaration of Johanna Schmitt, Esq.
in Support of Plaintiffs' Opposition to
Defendant's Motion for Summary Judgment**

J. BEGY

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

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TETRIS HOLDING, LLC, AND THE
TETRIS COMPANY, LLC,

Plaintiffs and
Counterclaim Defendants,

vs.

Civil Action No.
3:09-CV-6115 (FLW) (DEA)

XIO INTERACTIVE INC.,

Defendant and
Counterclaim Plaintiff.

-----x

VIDEOTAPED DEPOSITION OF JASON SCOTT

BEGY, a witness called by the Plaintiffs,
taken pursuant to the applicable provisions of
the Federal Rules of Civil Procedure, before
James A. Scally, RMR, CRR, a Notary Public in
and for the Commonwealth of Massachusetts, at
the offices of Ropes & Gray LLP, 800 Boylston
Street, Boston, Massachusetts, on Tuesday, May
10, 2011, commencing at 8:48 a.m.

<p style="text-align: right;">150</p> <p>1 J. BEGY</p> <p>2 A. Uh-huh.</p> <p>3 Q. You state, "Furthermore, whether an alteration to</p> <p>4 a game has an effect on how it is played is a litmus test</p> <p>5 for whether that alteration was to a rule."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. So in your view, then, anything that alters how a</p> <p>9 game is played is a game rule; is that right?</p> <p>10 A. That is one way of testing, correct.</p> <p>11 Q. And -- well, that's what you said is your litmus</p> <p>12 test; right?</p> <p>13 A. Uh-huh.</p> <p>14 Q. And in your view, anything that's a game rule is</p> <p>15 not expressive; correct?</p> <p>16 A. As I understand it, yes.</p> <p>17 Q. And in your view as you understand it, game rules</p> <p>18 aren't protected by copyright. Anybody can copy them;</p> <p>19 right?</p> <p>20 A. As I understand it, yes.</p> <p>21 Q. Okay. So in the various legal bits of information</p> <p>22 provided you, were you given any legal authority for what</p> <p>23 constituted a rule?</p> <p>24 A. No, I was not.</p> <p>25 Q. Did you ask?</p>	<p style="text-align: right;">152</p> <p>1 J. BEGY</p> <p>2 A. Well, in my report, I distinguish between things</p> <p>3 that are rules and things that are functional. So not all</p> <p>4 of the elements are rules.</p> <p>5 Q. Okay. So let's go back to paragraph 14 of your</p> <p>6 report.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Which of those 15 things are not rules?</p> <p>9 A. The seven geometric playing pieces being brightly</p> <p>10 colored is functional. The fact that the blocks are</p> <p>11 individually delineated is functional. The appearance of</p> <p>12 the blocks filling from the bottom to the top is</p> <p>13 functional. The ghost piece is functional. The change in</p> <p>14 color is functional, when a piece enters lockdown mode, and</p> <p>15 the layout of the matrixes in multiple.</p> <p>16 Q. I don't think you understood my question, or I</p> <p>17 wasn't clear in how I asked it.</p> <p>18 A. Sorry.</p> <p>19 Q. My question is of the -- do you believe that</p> <p>20 everything listed in paragraph 14 of your report are the</p> <p>21 rules of Tetris?</p> <p>22 A. No.</p> <p>23 MS. MAITRA: Objection. Asked and</p> <p>24 answered.</p> <p>25 Q. No, okay. So in your mind, there's a difference</p>
<p style="text-align: right;">151</p> <p>1 J. BEGY</p> <p>2 A. No, I did not.</p> <p>3 Q. But you are nonetheless giving an extra -- expert</p> <p>4 opinion as to whether "under the legal framework provided</p> <p>5 to me Xio's video game Mino infringes Tetris's copyright,</p> <p>6 trademark, or trade dress rights"; correct?</p> <p>7 A. Correct.</p> <p>8 Q. So under your definition of "rule," what, in your</p> <p>9 opinion, are the rules of Tetris?</p> <p>10 A. Well, they include most of the elements listed</p> <p>11 here. So things like the clearing of the lines, moving of</p> <p>12 the blocks, rotation of the blocks, the next piece, like</p> <p>13 the garbage lines, the size of the matrix, the fact that</p> <p>14 it's taller than it is wide, the way -- the starting</p> <p>15 orientation, how they appear at the start, and the -- the</p> <p>16 fact that the blocks are tetrominos. And then other things</p> <p>17 that are not listed in here that would be considered rules</p> <p>18 might be like scoring. So, for example, how many points is</p> <p>19 a given action worth.</p> <p>20 Q. So in your view, all the 15 things listed in</p> <p>21 paragraph 14 of your expert reports are rules of Tetris,</p> <p>22 and everybody should be free to copy them separately or</p> <p>23 collectively; is that right?</p> <p>24 MS. MAITRA: Objection. Compound and</p> <p>25 mischaracterizes testimony.</p>	<p style="text-align: right;">153</p> <p>1 J. BEGY</p> <p>2 between something that's a rule and something that is</p> <p>3 functional?</p> <p>4 A. As -- as my understanding of it is, and as I</p> <p>5 outlined here, a rule is functional, but because something</p> <p>6 is functional does not make it a rule.</p> <p>7 Q. Okay. So you're not claiming that everything in</p> <p>8 paragraph 14, these 15 elements, are all rules; correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you're not claiming that all these things are</p> <p>11 functional; is that right?</p> <p>12 MS. MAITRA: Objection.</p> <p>13 Mischaracterizes testimony.</p> <p>14 A. I am claiming that they are functional.</p> <p>15 Q. I just asked you which of these things are not</p> <p>16 rules, and you started saying that certain aspects, certain</p> <p>17 ones, were -- were functional; right?</p> <p>18 A. Correct. So --</p> <p>19 Q. Does that mean that other ones aren't functional?</p> <p>20 A. No. It means that rule is a subset of functional.</p> <p>21 Q. Rule -- can you explain what you mean?</p> <p>22 A. Sure. I mean that in the context of a game, the</p> <p>23 game rules are functional. That does not mean that any</p> <p>24 functional element is also a rule. So there's a broad</p> <p>25 category of functional elements under which falls rules.</p>

<p style="text-align: right;">162</p> <p>1 J. BEGY</p> <p>2 Q. Isn't it true that you have never in your life</p> <p>3 before being retained in this case had any conversation</p> <p>4 with anyone about what is protectable in a video game?</p> <p>5 A. That is kind of -- that's an impossible question</p> <p>6 to answer, because I can't 100 percent account for every</p> <p>7 conversation I've ever had.</p> <p>8 Q. You can't recall one, though, can you?</p> <p>9 A. It seems likely that I've talked about it with</p> <p>10 someone at some point, but I can't say for certain.</p> <p>11 Q. And you can't point to any of your articles or</p> <p>12 panels that you were on about Mystery Science Theater 3000</p> <p>13 or anything like that that talks about the protectable</p> <p>14 expression of video games; right?</p> <p>15 A. Correct.</p> <p>16 Q. And were you given all of Dr. Bogost's report,</p> <p>17 including all the exhibits?</p> <p>18 A. Honestly, I don't -- I don't remember if the</p> <p>19 exhibits were given or not.</p> <p>20 Q. Did you think to ask -- well, let's look at</p> <p>21 Exhibit E to his report. It's the very end, last page of</p> <p>22 the document -- second-to-the-last page of the document.</p> <p>23 Forgive me. And the document I'm referring to is Exhibit</p> <p>24 11 to your deposition.</p> <p>25 This is a CD containing a DVD containing</p>	<p style="text-align: right;">164</p> <p>1 J. BEGY</p> <p>2 Q. And you say, "Like rules, a video game's game</p> <p>3 mechanics are the formal properties of the system which</p> <p>4 specify the limitations and affordances placed on the</p> <p>5 player. Thus I use these terms interchangeably in this</p> <p>6 report."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. There's no citation here to any definition of</p> <p>10 "game mechanics" by anyone; isn't that true?</p> <p>11 A. That's true.</p> <p>12 Q. Why?</p> <p>13 A. Because "game mechanics" is a phrase that is used</p> <p>14 frequently, and there is little common understanding over</p> <p>15 what exactly it means. I have been present at many debates</p> <p>16 over what it -- what it could mean, and there -- I've never</p> <p>17 seen a resolution.</p> <p>18 Q. So some -- so it's an imprecise term; is that</p> <p>19 right?</p> <p>20 A. It can --</p> <p>21 MS. MAITRA: Objection.</p> <p>22 Mischaracterizes testimony and vague.</p> <p>23 A. It can be imprecise.</p> <p>24 Q. And some people use "game mechanics" to describe</p> <p>25 some things and some people use it to describe other</p>
<p style="text-align: right;">163</p> <p>1 J. BEGY</p> <p>2 executable or video files for Tetris games and Mino and</p> <p>3 Mino Lite. Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. Did you ever get that CD?</p> <p>6 A. I definitely didn't get anything physical.</p> <p>7 Q. So you never got the CD, the DVD containing copies</p> <p>8 of various Tetris games that he analyzed in his report;</p> <p>9 right?</p> <p>10 MS. MAITRA: Objection.</p> <p>11 Mischaracterizes testimony.</p> <p>12 A. I think -- I'm not 100 percent, but I think I was</p> <p>13 given a digital version of this. But it's not something I</p> <p>14 really considered in the report.</p> <p>15 Q. Isn't it true you got a PDF of the report that Dr.</p> <p>16 Bogost did and you didn't get a hard copy with the physical</p> <p>17 DVD?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And you didn't ask for it either?</p> <p>20 A. No, I did not.</p> <p>21 Q. And paragraph 17 of your expert report says, "Game</p> <p>22 mechanics do not substantively differ from game rules in</p> <p>23 the context of Tetris."</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>	<p style="text-align: right;">165</p> <p>1 J. BEGY</p> <p>2 things; right?</p> <p>3 MS. MAITRA: Objection. Vague.</p> <p>4 A. As far as I can tell, yes.</p> <p>5 Q. So in your expert report, you've chosen to equate</p> <p>6 "game mechanics," "rules"; right? You use them</p> <p>7 interchangeably; correct?</p> <p>8 A. Correct.</p> <p>9 Q. But not everybody would agree with that definition</p> <p>10 in the field of studying video games; right?</p> <p>11 A. That seems possible, yes.</p> <p>12 Q. Then you go on to say -- well, do game mechanics</p> <p>13 differ from game rules in games other than Tetris?</p> <p>14 A. Well, without a concrete understanding of what</p> <p>15 mechanics are, it's not an answerable question.</p> <p>16 Q. Then in paragraph 18, you go on to state,</p> <p>17 "Functional game elements, which include game rules and</p> <p>18 game mechanics, are those elements that serve a purpose or</p> <p>19 function in the game beyond fanciful expression."</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Where did you come up with this definition for</p> <p>23 what constitutes a functional game element?</p> <p>24 A. You know, I don't know that there -- it's not like</p> <p>25 there was a place. It was based on, you know, my</p>

<p style="text-align: right;">210</p> <p>1 J. BEGY</p> <p>2 A. Again, it's hard to say without having a concrete</p> <p>3 example, but I mean certainly shape defines differences</p> <p>4 between these pieces.</p> <p>5 Q. So if I looked at the I piece of the Tetris game,</p> <p>6 that looks different than the S piece of the Tetris game;</p> <p>7 right?</p> <p>8 A. True.</p> <p>9 Q. And you could tell them apart without them being</p> <p>10 the same -- different colors; right?</p> <p>11 A. Well, I mean a solid principle in design is to</p> <p>12 have these things -- have differences marked in multiple</p> <p>13 ways so that it requires less effort on the part of the</p> <p>14 player to distinguish them. So, yes, they could be</p> <p>15 distinguished solely on shape alone, but it's more</p> <p>16 effective to have multiple features.</p> <p>17 Q. Well, the pentomino puzzle that inspired Alexey</p> <p>18 Pajitnov, isn't it true that the pieces were all the same</p> <p>19 color?</p> <p>20 A. I don't know exactly which version of the puzzle</p> <p>21 he had. I have seen versions where they're all one color.</p> <p>22 Q. Well, it was part of the exhibits to his</p> <p>23 deposition, so it was available to you, since you said you</p> <p>24 read his deposition and looked at the exhibits, but I guess</p> <p>25 you didn't look at that exhibit; right?</p>	<p style="text-align: right;">212</p> <p>1 J. BEGY</p> <p>2 can't say either way for certain.</p> <p>3 Q. Well, it's not hypothetical. You've given an</p> <p>4 expert report about functionality and what's required to be</p> <p>5 in the Tetris video game; right?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. So we're not hypothetical. This is your</p> <p>8 expert opinion in this case. And my question to you, since</p> <p>9 you opined in your report that Alexey Pajitnov was inspired</p> <p>10 by the pentomino puzzle, and you style yourself as somebody</p> <p>11 who allegedly designs games, isn't it true that if you were</p> <p>12 designing a game based on the pentomino puzzle, you could</p> <p>13 have just as easily had a playing field horizontal as</p> <p>14 opposed to with a vertical configuration; right?</p> <p>15 MS. MAITRA: So, objection. Form,</p> <p>16 compound, and vague and ambiguous.</p> <p>17 A. While it would be possible to do it any way I</p> <p>18 want, the ending result and the final choice would be</p> <p>19 influenced by the overall design, and -- among other</p> <p>20 things.</p> <p>21 Q. Well, sure, you would -- in designing a game, you</p> <p>22 would take different things into account, but isn't it true</p> <p>23 that before Alexey Pajitnov designed Tetris, there's no --</p> <p>24 there was no stone on which it was written that Tetris had</p> <p>25 to have a playing field that was taller than it was wide;</p>
<p style="text-align: right;">211</p> <p>1 J. BEGY</p> <p>2 A. I don't recall looking at it.</p> <p>3 Q. And if someone were inspired to create a video</p> <p>4 game that's based on the pentomino puzzle, the -- it would</p> <p>5 be a design choice as to whether to have the individual</p> <p>6 mino blocks delineated; right?</p> <p>7 MS. MAITRA: Objection. Asked and</p> <p>8 answered and vague and ambiguous.</p> <p>9 A. As with having them brightly colored, it is a</p> <p>10 design choice, but it is also a wise choice from a</p> <p>11 usability standpoint.</p> <p>12 Q. But other choices could have been made too; right?</p> <p>13 MS. MAITRA: Objection. Vague.</p> <p>14 A. I suppose they could not have been delineated, but</p> <p>15 that would make them harder to distinguish and evaluate</p> <p>16 where they fit.</p> <p>17 Q. And you're aware of versions of Tetris that don't</p> <p>18 have the tetromino pieces individually delineated; right?</p> <p>19 A. I am.</p> <p>20 Q. And if you were inspired to create a video game</p> <p>21 based on the pentomino puzzle, there's no reason that the</p> <p>22 playing field had to be taller than it's wide; right?</p> <p>23 MS. MAITRA: Objection. Vague.</p> <p>24 A. I mean, again, this is incredibly like -- it</p> <p>25 depends on the game. I mean this is hypothetical, so I</p>	<p style="text-align: right;">213</p> <p>1 J. BEGY</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. And you, as a creative guy, could have designed a</p> <p>5 video game inspired by the pentomino puzzle perhaps even</p> <p>6 with a circular playing field; right?</p> <p>7 MS. MAITRA: Objection. Vague.</p> <p>8 A. Presumably.</p> <p>9 Q. Or a square playing field; right?</p> <p>10 A. Correct.</p> <p>11 Q. And if you were creating a video game inspired by</p> <p>12 the pentomino puzzle, there was no reason that playing</p> <p>13 pieces would have to start at the top of the playing field;</p> <p>14 right?</p> <p>15 MS. MAITRA: Objection. Vague.</p> <p>16 A. Correct.</p> <p>17 Q. You could design a video game where playing pieces</p> <p>18 start on the side or on the bottom; isn't that true?</p> <p>19 A. That's true.</p> <p>20 Q. And isn't it true that if you were inspired to</p> <p>21 create a game based on a pentomino puzzle, the pieces could</p> <p>22 have started in the game in any orientation?</p> <p>23 A. That's true.</p> <p>24 Q. When you're playing a pentomino puzzle, the pieces</p> <p>25 are just sitting there in front of you. You can turn them</p>

<p style="text-align: right;">214</p> <p>1 J. BEGY</p> <p>2 any way you want; right?</p> <p>3 A. That's true.</p> <p>4 Q. They don't -- they don't start in any particular</p> <p>5 position; correct?</p> <p>6 A. Correct.</p> <p>7 Q. So it's a design choice to decide that "I want the</p> <p>8 piece to appear on the top of the screen"; correct?</p> <p>9 MS. MAITRA: Objection. Vague and</p> <p>10 ambiguous.</p> <p>11 A. Correct.</p> <p>12 Q. And it's a design choice to say that "I want the</p> <p>13 L-shaped piece to first appear in a certain orientation";</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 MS. MAITRA: Same objection.</p> <p>17 Just give me a chance.</p> <p>18 Q. And it's a design choice to decide how each of</p> <p>19 those seven pieces would first appear; correct?</p> <p>20 MS. MAITRA: Objection. Vague and</p> <p>21 ambiguous.</p> <p>22 A. Correct.</p> <p>23 Q. And if you were -- in a pentomino puzzle, there's</p> <p>24 no aspect of line clearing, is there?</p> <p>25 MS. MAITRA: Objection. Vague and</p>	<p style="text-align: right;">216</p> <p>1 J. BEGY</p> <p>2 were inspired to make a game based on such a puzzle that</p> <p>3 you had to use a horizontal line clearance; right?</p> <p>4 MS. MAITRA: Objection. Form and</p> <p>5 vague and ambiguous.</p> <p>6 A. Well, again, depending on the game you're making,</p> <p>7 but there would be no hard-and-fast rule.</p> <p>8 Q. Right. And you could have designed a game so that</p> <p>9 the shape you had to create was a -- was a square or a</p> <p>10 sphere if you wanted to; correct?</p> <p>11 A. Correct.</p> <p>12 Q. And there's no reason in designing a game inspired</p> <p>13 by the pentomino puzzle that the pieces had to move down</p> <p>14 from the top to the bottom of the screen; right?</p> <p>15 A. Correct.</p> <p>16 Q. Because in an actual pentomino puzzle, the pieces</p> <p>17 don't move at all. You just pick them up and put them</p> <p>18 where you want; right?</p> <p>19 A. Correct.</p> <p>20 Q. So it was a design choice to decide to have the</p> <p>21 puzzle pieces start at the top of the screen and move down;</p> <p>22 correct?</p> <p>23 MS. MAITRA: Objection. Vague and</p> <p>24 ambiguous.</p> <p>25 A. As I understand it, yes.</p>
<p style="text-align: right;">215</p> <p>1 J. BEGY</p> <p>2 ambiguous.</p> <p>3 A. No, there's not.</p> <p>4 Q. In a pentomino puzzle, you put the pieces together</p> <p>5 to make a rectangular shape; is that right?</p> <p>6 A. If that, for you as the player, is your goal.</p> <p>7 Q. Okay. There could be lots of different shapes, in</p> <p>8 fact, in a pentomino puzzle that someone has as a goal;</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. And isn't it true that the game usually comes with</p> <p>12 a little guide saying you can make myriad different shapes</p> <p>13 as part of your goal?</p> <p>14 MS. MAITRA: Objection. Calls for</p> <p>15 speculation.</p> <p>16 A. Not having ever purchased one or seen one bought,</p> <p>17 I couldn't say.</p> <p>18 Q. So you're not aware that the one that inspired</p> <p>19 Alexey Pajitnov had a -- an insert that challenged people</p> <p>20 to rearrange the pieces in various shapes other than a</p> <p>21 horizontal line?</p> <p>22 A. I was not aware of that.</p> <p>23 Q. And isn't it possible if you wanted to, in light</p> <p>24 of the fact that a pentomino puzzle did not have a</p> <p>25 horizontal line clearance, there's no reason that if you</p>	<p style="text-align: right;">217</p> <p>1 J. BEGY</p> <p>2 Q. And in terms of those pieces, isn't it also</p> <p>3 possible that not visually distinguishing the pieces would</p> <p>4 be a valid creative choice?</p> <p>5 MS. MAITRA: Objection. Vague and</p> <p>6 ambiguous and form.</p> <p>7 A. How do you mean distinguishing the pieces?</p> <p>8 Q. Well, you were talking earlier about how you</p> <p>9 thought having the pieces different colored would help</p> <p>10 people tell them apart; isn't that right?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. And that you thought -- that it was -- it</p> <p>13 would be maybe easier for the player if they were different</p> <p>14 colors; is that right?</p> <p>15 A. That's correct.</p> <p>16 Q. But isn't it true that an equally valid design</p> <p>17 choice would be to have them all the same color and make</p> <p>18 the game more challenging?</p> <p>19 MS. MAITRA: Objection. Vague and</p> <p>20 ambiguous.</p> <p>21 A. I mean the word "valid" is tricky there. I think</p> <p>22 that if you did not give another means of distinguishing</p> <p>23 them, common feedback from play testers and players would</p> <p>24 be that there should be a way.</p> <p>25 Q. Well, you don't know whether that's true; right?</p>

<p style="text-align: right;">218</p> <p>1 J. BEGY</p> <p>2 A. I don't know for certain, no.</p> <p>3 Q. No. And isn't it true that in the actual</p> <p>4 pentomino game that inspired Mr. Pajitnov, the pieces were</p> <p>5 all the same color?</p> <p>6 A. I believe so.</p> <p>7 MS. MAITRA: Objection. Asked and</p> <p>8 answered.</p> <p>9 Q. Now --</p> <p>10 MS. MAITRA: Just give me a chance.</p> <p>11 Q. When you -- if you were designing a game inspired</p> <p>12 by the pentomino puzzle, there's -- and you chose to have</p> <p>13 a -- to have part of the goals of the game to create a</p> <p>14 horizontal shape, there wouldn't have been any requirement</p> <p>15 that that shape had to disappear to be removed from the</p> <p>16 playing field; right?</p> <p>17 A. There would not have had to have been a</p> <p>18 requirement, no.</p> <p>19 Q. Right. So in the pentomino game that inspired Mr.</p> <p>20 Pajitnov, there wasn't anything that disappeared; right?</p> <p>21 A. I would assume not, no.</p> <p>22 Q. Right. We're talking about physical pieces of</p> <p>23 plastic. It would be unlikely that they would be</p> <p>24 disappearing; correct?</p> <p>25 A. Yes. I would think so, yes.</p>	<p style="text-align: right;">220</p> <p>1 J. BEGY</p> <p>2 A. Correct.</p> <p>3 Q. And there's lots of choices on whether that shape</p> <p>4 would be removed from the playing field in a particular</p> <p>5 way; right?</p> <p>6 A. Correct.</p> <p>7 Q. And if you were designing a game inspired by the</p> <p>8 pentomino puzzle, the playing pieces didn't need to</p> <p>9 consolidate downward after the shape was removed; right?</p> <p>10 MS. MAITRA: Objection. Vague and</p> <p>11 ambiguous.</p> <p>12 A. I suppose they wouldn't have to, although I have a</p> <p>13 hard time imagining enjoying such a game.</p> <p>14 Q. Well, the shape could have traveled upwards,</p> <p>15 disturbing the playing pieces, and they could have remained</p> <p>16 in those locations; right?</p> <p>17 MS. MAITRA: Objection. Vague and</p> <p>18 ambiguous.</p> <p>19 A. I suppose, but this is more of a compound rules</p> <p>20 change now at this point.</p> <p>21 Q. Well, you in your master's thesis were thinking</p> <p>22 about doing a version of Tetris where the pieces moved up;</p> <p>23 right?</p> <p>24 A. I was discussing what such a thing would be like,</p> <p>25 correct.</p>
<p style="text-align: right;">219</p> <p>1 J. BEGY</p> <p>2 Q. Right. So it was a design choice to have the</p> <p>3 shape that was created disappear; right?</p> <p>4 A. Correct.</p> <p>5 Q. And there were other design choices that could</p> <p>6 have been made other than having the shape disappear;</p> <p>7 right?</p> <p>8 MS. MAITRA: Objection. Vague and</p> <p>9 ambiguous.</p> <p>10 A. Correct.</p> <p>11 Q. For example, Alexey Pajitnov could have designed</p> <p>12 the game to have the shape turn to water and drip off the</p> <p>13 sides of the screen, for example?</p> <p>14 MS. MAITRA: Objection. Form.</p> <p>15 A. I don't understand how that's different from</p> <p>16 disappearing.</p> <p>17 Q. Well, you would see it turn to water and see it</p> <p>18 drip off as opposed to instantly disappearing; isn't that</p> <p>19 true?</p> <p>20 MS. MAITRA: Objection. Vague and</p> <p>21 ambiguous.</p> <p>22 A. I -- I suppose. I mean I'd have to see it.</p> <p>23 Q. There'd be lots and lots of different ways you</p> <p>24 could have -- you could form -- there's lots of choices on</p> <p>25 what shape could be formed; right?</p>	<p style="text-align: right;">221</p> <p>1 J. BEGY</p> <p>2 Q. Right. And when Alexey Pajitnov was designing</p> <p>3 Tetris, there hadn't been Tetris before. He could have had</p> <p>4 the pieces move up, he could have had the pieces move down,</p> <p>5 or he could have had them move diagonally or side to side;</p> <p>6 right?</p> <p>7 A. Correct.</p> <p>8 Q. Those were all choices he made; right?</p> <p>9 A. Correct.</p> <p>10 Q. And in designing a game inspired by a pentomino</p> <p>11 puzzle, it was not necessary to use garbage lines; right?</p> <p>12 A. I suppose not, no.</p> <p>13 Q. And if there were garbage lines, there was no</p> <p>14 obligation that the garbage lines had to appear in a</p> <p>15 particular place on the screen; right?</p> <p>16 MS. MAITRA: Objection. Vague.</p> <p>17 A. I'm sorry, can you repeat just the last part?</p> <p>18 Q. Sure. If there were garbage lines, they could</p> <p>19 have appeared anywhere; right?</p> <p>20 MS. MAITRA: Same objection.</p> <p>21 A. Well, assuming nothing else has changed, they</p> <p>22 probably couldn't appear at the very top, but.</p> <p>23 Q. Well, they could have had more than one missing</p> <p>24 block; isn't that true?</p> <p>25 A. That's true.</p>

<p style="text-align: right;">222</p> <p>1 J. BEGY</p> <p>2 Q. And if you were designing a game based on the</p> <p>3 pentomino puzzle, you didn't need to have blocks</p> <p>4 automatically filled from the bottom to the top when it was</p> <p>5 over; right?</p> <p>6 A. That's correct.</p> <p>7 Q. And if you were designing a game based on a</p> <p>8 pentomino puzzle, there's no reason a ghost piece was</p> <p>9 needed; right?</p> <p>10 A. Again, it's clearly something that helps, but it's</p> <p>11 not necessary.</p> <p>12 Q. And some people might like the ghost piece, and</p> <p>13 some people might not like the ghost piece; right?</p> <p>14 A. Correct.</p> <p>15 Q. Some people like games to be more challenging than</p> <p>16 other games; right?</p> <p>17 A. Correct.</p> <p>18 Q. There's some players who get bored if the game is</p> <p>19 too easy; right?</p> <p>20 A. Correct.</p> <p>21 Q. And there were alternatives to a ghost piece to --</p> <p>22 if you wanted to let people know what the next piece was;</p> <p>23 right?</p> <p>24 MS. MAITRA: Objection. Vague and</p> <p>25 form.</p>	<p style="text-align: right;">224</p> <p>1 J. BEGY</p> <p>2 Q. What I meant was he could have shown the next, you</p> <p>3 know, two or three pieces if he wanted to in different</p> <p>4 spots?</p> <p>5 A. True.</p> <p>6 Q. And if you were designing a game that was inspired</p> <p>7 by a pentomino puzzle, there was no requirement that the</p> <p>8 playing pieces needed to change color in lockdown mode;</p> <p>9 right?</p> <p>10 MS. MAITRA: Objection. No. Strike</p> <p>11 that. Sorry.</p> <p>12 A. Again, I suppose there's no hard-and-fast rule,</p> <p>13 but it's a good usability design.</p> <p>14 Q. But he didn't need to design it that way; right?</p> <p>15 MS. MAITRA: Objection. Vague and</p> <p>16 ambiguous.</p> <p>17 Q. It was a choice; correct?</p> <p>18 MS. MAITRA: Objection. Compound and</p> <p>19 vague and ambiguous.</p> <p>20 A. It was a choice, yes.</p> <p>21 Q. Okay. And if you were designing a game based on a</p> <p>22 pentomino puzzle, there's no reason that you would have</p> <p>23 even needed a multiplayer mode; right?</p> <p>24 A. It would depend on the design of the game.</p> <p>25 Q. Right. But even the idea -- the idea of having a</p>
<p style="text-align: right;">223</p> <p>1 J. BEGY</p> <p>2 Q. Excuse me. If you didn't want to use a ghost</p> <p>3 piece, as Alexey Pajitnov did, you could have done</p> <p>4 something else to show where the piece would fall; isn't</p> <p>5 that true?</p> <p>6 A. Yes.</p> <p>7 Q. You could have had guiding lines down with the</p> <p>8 side, for example; right?</p> <p>9 MS. MAITRA: Objection. Vague.</p> <p>10 A. Sure.</p> <p>11 Q. And if you were designing a game based on the</p> <p>12 pentomino puzzle, you didn't need to have -- to display the</p> <p>13 next piece that -- that was next going to be coming; right?</p> <p>14 A. True.</p> <p>15 Q. And that was another design choice Alexey made;</p> <p>16 correct?</p> <p>17 MS. MAITRA: Objection. Vague and</p> <p>18 ambiguous.</p> <p>19 A. True.</p> <p>20 Q. He could have said, "I don't want to show the next</p> <p>21 piece"; correct?</p> <p>22 A. Correct.</p> <p>23 Q. Or he could have said, "You know what, I'm going</p> <p>24 to show the next three pieces in different sizes"; right?</p> <p>25 A. How do you mean "different sizes"?</p>	<p style="text-align: right;">225</p> <p>1 J. BEGY</p> <p>2 multiplayer mode is a design choice; correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And the screen layout in a multiplayer mode could</p> <p>5 have looked very different depending on what the designer</p> <p>6 wanted to do; right?</p> <p>7 MS. MAITRA: Objection. Vague and</p> <p>8 ambiguous.</p> <p>9 A. It really depends on the nature of the multiplayer</p> <p>10 mode.</p> <p>11 Q. But you could configure the multiplayer -- you've</p> <p>12 seen multiplayer modes laid out in all sorts of different</p> <p>13 ways in video games; right?</p> <p>14 A. That's true.</p> <p>15 Q. So isn't it true that Alexey Pajitnov made a whole</p> <p>16 series of creative choices when he designed Tetris?</p> <p>17 MS. MAITRA: Objection.</p> <p>18 Mischaracterizes testimony, vague and</p> <p>19 ambiguous.</p> <p>20 A. Well, again, I think that these are all functional</p> <p>21 elements, which I see as different than being creative in</p> <p>22 this regard.</p> <p>23 MS. CENDALI: Move to strike as</p> <p>24 nonresponsive.</p> <p>25 Q. Let me ask you again. Isn't it true that Alexey</p>

<p style="text-align: right;">226</p> <p>1 J. BEGY</p> <p>2 Pajitnov made a whole series of creative choices when he</p> <p>3 designed Tetris?</p> <p>4 MS. MAITRA: Same objections.</p> <p>5 A. And it's also, you know, I'm not -- I was not</p> <p>6 privy to his process in making Tetris.</p> <p>7 Q. He talked all about it in his deposition; right?</p> <p>8 A. That's true.</p> <p>9 Q. Okay. And you've mentioned some documentary you</p> <p>10 saw; right?</p> <p>11 A. True.</p> <p>12 Q. So isn't it true that Alexey Pajitnov made a whole</p> <p>13 series of creative choices when he designed Tetris?</p> <p>14 MS. MAITRA: Objection. Asked and</p> <p>15 answered and vague and ambiguous.</p> <p>16 A. I don't -- again, I don't believe that these</p> <p>17 choices were creative in that sense.</p> <p>18 Q. So just to be clear, you don't believe in</p> <p>19 designing a game inspired by a pentomino puzzle that any of</p> <p>20 the elements reflected in paragraph 14 of your expert</p> <p>21 report are a creative choice?</p> <p>22 MS. MAITRA: Objection. Asked and</p> <p>23 answered.</p> <p>24 A. Again, I would characterize them more as an</p> <p>25 inventive choice in determining how it works, but not</p>	<p style="text-align: right;">228</p> <p>1 J. BEGY</p> <p>2 Q. Okay. So what would resonate in the culture?</p> <p>3 A. Well, certainly like the Super Mario Brothers</p> <p>4 games still, Pacman, Space Invaders, which was much more</p> <p>5 than 25 years ago.</p> <p>6 Q. And there are not very many, are there?</p> <p>7 A. Well, in my knowledge, no. I'm not as familiar</p> <p>8 with Asian or European markets and what might still be</p> <p>9 popular there.</p> <p>10 Q. Okay. Now, turning to paragraphs 38 to 42 of your</p> <p>11 report.</p> <p>12 A. Uh-huh.</p> <p>13 Q. In this section you talk about the long vertical</p> <p>14 rectangular playing field of the game, right --</p> <p>15 A. Correct.</p> <p>16 Q. -- in Tetris. And you believe that the long</p> <p>17 vertical rectangular playing field is -- is part of the</p> <p>18 rules of Tetris; is that right?</p> <p>19 A. That's right.</p> <p>20 Q. What is your basis for saying that the shape of</p> <p>21 that playing field is part of the rules of Tetris?</p> <p>22 A. In that, following Juul's definition, it</p> <p>23 determines the limitations and affordances placed on the</p> <p>24 player and that having the matrix be a different size would</p> <p>25 affect the viable strategies in the game.</p>
<p style="text-align: right;">227</p> <p>1 J. BEGY</p> <p>2 creative in the sense of creative expression.</p> <p>3 Q. So the answer to my question is no, you don't</p> <p>4 believe any of the elements in paragraph 14 are creative</p> <p>5 choices?</p> <p>6 MS. MAITRA: Same objections, asked</p> <p>7 and answered, and vague and ambiguous.</p> <p>8 A. Yes.</p> <p>9 Q. And how many video games created 25 years ago are</p> <p>10 still popular today?</p> <p>11 A. I couldn't say.</p> <p>12 Q. Can you name any other than Tetris?</p> <p>13 A. Well, I don't have -- I can speak to games that</p> <p>14 still certainly seem to have some degree of cultural</p> <p>15 resonance, but I could not objectively measure popularity.</p> <p>16 Q. Okay. Tell me the name of a game that in your</p> <p>17 opinion was created 25 years ago and is still as popular as</p> <p>18 Tetris is today.</p> <p>19 MS. MAITRA: Objection.</p> <p>20 Mischaracterizes testimony and lacks</p> <p>21 foundation.</p> <p>22 A. Again, I can speak to things that are -- that</p> <p>23 resonate in the culture, but as popular as Tetris, I mean I</p> <p>24 don't know what -- how one would quantify Tetris's</p> <p>25 popularity.</p>	<p style="text-align: right;">229</p> <p>1 J. BEGY</p> <p>2 Q. Do you agree that a game designer can design the</p> <p>3 playing field of a puzzle video game in an almost unlimited</p> <p>4 number of ways?</p> <p>5 A. I would agree.</p> <p>6 Q. Turning to -- do you agree that there are many</p> <p>7 successful puzzle video games that do not use the same or</p> <p>8 similar playing field as Tetris?</p> <p>9 A. Well, without a concrete understanding of what</p> <p>10 defines success, I would say probably.</p> <p>11 Q. And do you agree that an electronic puzzle game</p> <p>12 could function perfectly well without using a playing field</p> <p>13 that's the same or similar to Tetris?</p> <p>14 MS. MAITRA: Objection. Vague and</p> <p>15 ambiguous.</p> <p>16 A. Again, it's hard to say, because it's</p> <p>17 hypothetical. But I imagine it would be possible.</p> <p>18 Q. Well, aren't there a lot of examples in Dr.</p> <p>19 Bogost's report of puzzle video games that use playing</p> <p>20 fields of different shapes than Tetris?</p> <p>21 A. There are some, yes.</p> <p>22 Q. And are you aware that there are certain versions</p> <p>23 of Tetris that use a different size and shape playing</p> <p>24 field?</p> <p>25 MS. MAITRA: Objection. Lacks</p>

<p style="text-align: right;">230</p> <p>1 J. BEGY</p> <p>2 foundation.</p> <p>3 A. I seem to recall reading as much, but I can't</p> <p>4 think of an example.</p> <p>5 Q. Are you aware that Tetris 360 for the Radica hand-</p> <p>6 held device uses a square playing field?</p> <p>7 A. I've never heard of either of those things.</p> <p>8 Q. I'll represent to you that's true. If that's the</p> <p>9 case, isn't it true that the shape of the playing field</p> <p>10 isn't critical to the game play of Tetris?</p> <p>11 A. Well, if the shape is different, then certainly</p> <p>12 the options and strategies available to me would be</p> <p>13 different, and so playing on a square matrix would be a</p> <p>14 different experience.</p> <p>15 Q. Well, turning in your report, in section</p> <p>16 paragraphs 43 to 47 --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- that's where you talk about the size and shape</p> <p>19 of the playing pieces, what The Tetris Company calls</p> <p>20 tetriminos; right?</p> <p>21 A. Yes.</p> <p>22 Q. And in your view, the size and shape of the</p> <p>23 playing pieces in Tetris is functional; right?</p> <p>24 A. Correct.</p> <p>25 Q. And what's your basis for that?</p>	<p style="text-align: right;">232</p> <p>1 J. BEGY</p> <p>2 A. I have no way of saying either way.</p> <p>3 Q. But would you agree that the size and shape of the</p> <p>4 playing pieces in Tetris don't affect the time or cost</p> <p>5 associated with making an electronic puzzle game?</p> <p>6 MS. MAITRA: Objection. Compound and</p> <p>7 vague.</p> <p>8 A. I couldn't say for certain.</p> <p>9 Q. Do you agree that an electronic puzzle game could</p> <p>10 function perfectly well without using tetriminos?</p> <p>11 MS. MAITRA: Objection. Vague and</p> <p>12 ambiguous.</p> <p>13 A. Yes.</p> <p>14 Q. Then in paragraphs 48 to 50 of your report, that</p> <p>15 discusses the bright colors of the tetriminos in Tetris,</p> <p>16 and you opine that those bright colors are a functional</p> <p>17 aspect of the game; correct?</p> <p>18 A. Correct.</p> <p>19 Q. Do you agree that a game designer could choose an</p> <p>20 almost unlimited number of colors for the playing pieces in</p> <p>21 a puzzle video game?</p> <p>22 A. I agree.</p> <p>23 Q. And using brightly colored playing peaches --</p> <p>24 pieces in Tetris does not offer a competitive advantage</p> <p>25 over other puzzle video games, does it?</p>
<p style="text-align: right;">231</p> <p>1 J. BEGY</p> <p>2 A. As with the matrix, affecting the -- or altering</p> <p>3 the size and shape of the playing pieces would alter the</p> <p>4 player's limitations and affordances and thereby alter how</p> <p>5 one would play the game.</p> <p>6 Q. Do you agree that a game designer could design the</p> <p>7 playing pieces for a puzzle video game in an almost</p> <p>8 unlimited number of other ways?</p> <p>9 MS. MAITRA: Objection. Vague.</p> <p>10 A. I would assume so, yes.</p> <p>11 Q. So it's not essential to use tetriminos to -- or</p> <p>12 tetriminos in designing a puzzle game, right, puzzle video</p> <p>13 game?</p> <p>14 MS. MAITRA: Objection.</p> <p>15 Mischaracterizes testimony and vague.</p> <p>16 Q. Right?</p> <p>17 A. So, I'm sorry, just to repeat the question --</p> <p>18 Q. Sure. It's not necessary to use tetriminos or</p> <p>19 tetriminos to design a puzzle video game; right?</p> <p>20 A. Correct.</p> <p>21 Q. And the size and shape of the playing pieces in</p> <p>22 Tetris do not offer a competitive advantage over other</p> <p>23 puzzle video games, do -- do they?</p> <p>24 MS. MAITRA: Objection. Vague and</p> <p>25 ambiguous.</p>	<p style="text-align: right;">233</p> <p>1 J. BEGY</p> <p>2 MS. MAITRA: Objection. Vague and</p> <p>3 ambiguous.</p> <p>4 A. I couldn't say for certain, but my intuition would</p> <p>5 be that a game where you can see the pieces would be</p> <p>6 slightly more successful than a game where you cannot see</p> <p>7 the pieces.</p> <p>8 Q. Well, there'd be other ways you could see the</p> <p>9 pieces other than the choices made in Tetris; right?</p> <p>10 A. That's true.</p> <p>11 Q. Do you agree that the brightly colored playing</p> <p>12 pieces in Tetris do not affect the time or cost associated</p> <p>13 with making an electronic puzzle game?</p> <p>14 MS. MAITRA: Objection. Compound and</p> <p>15 vague and ambiguous.</p> <p>16 A. Again, I couldn't speak to that either way.</p> <p>17 Q. Do you agree that there are many successful puzzle</p> <p>18 video games that don't use brightly colored playing pieces?</p> <p>19 MS. MAITRA: Objection. Vague and</p> <p>20 ambiguous.</p> <p>21 A. Again, it depends on -- I'm not sure what</p> <p>22 "successful" means in that, so I couldn't speak to it</p> <p>23 either way.</p> <p>24 Q. Well, commercially on sale, available for people</p> <p>25 to make money on the App Store.</p>